THE
LAW OF EXTRADITION.

EDWARD CLARKE.

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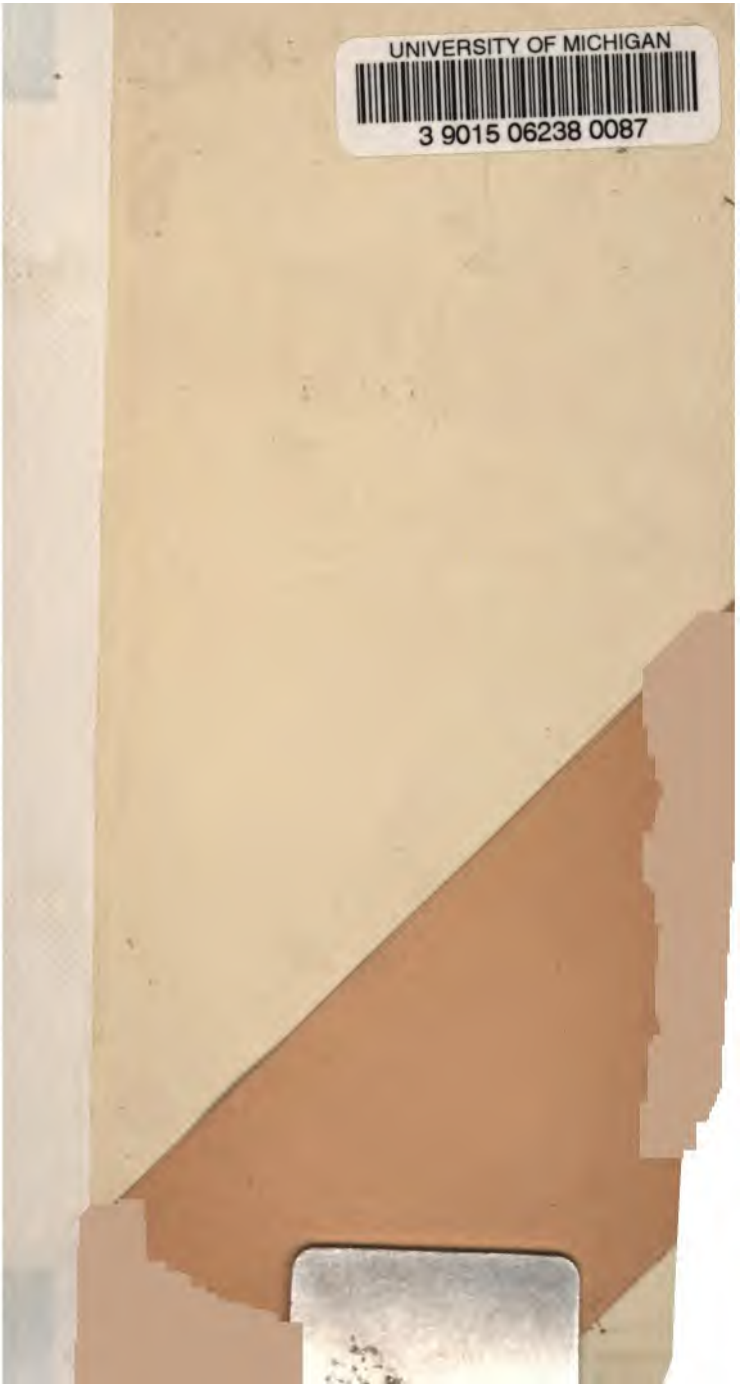

A TREATISE

UPON

THE LAW OF EXTRADITION

WITH

THE CONVENTIONS UPON THE SUBJECT
EXISTING BETWEEN ENGLAND & FOREIGN NATION
AND THE CASES DECIDED THEREON.

BY

EDWARD CLARKE,

OF LINCOLN'S INN, BARRISTER-AT-LAW, AND TANCRED STUDENT.

LONDON:
STEVENS AND HAYNES,
Law Publishers,
11 BELL YARD, TEMPLE BAR.
1867.

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The Leader of the Surrey Sessions
with Edward Clarke's Comp.

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TO

THE GOVERNORS OF THE TANCRED TRUST

This Book

IS WITH ALL RESPECT DEDICATED,

BY

THEIR OBLIGED AND FAITHFUL SERVANT,

EDWARD CLARKE.

PREFACE.

THE Law of Extradition has, until very recently, attracted little attention in England. Various circumstances have of late brought it into frequent public discussion, and it seems advisable that the information upon the subject should be gathered into a convenient form. Several cases, three of them of great importance, have lately been decided in the English courts; and during a Parliamentary discussion which took place a few months ago Lord Stanley assured the House of Commons that an opportunity would be afforded next session for a full and deliberate consideration of the whole subject. The only English book expressly devoted to it is a small pamphlet, published twenty years ago, by Mr Charles Egan. This pamphlet, written soon after the treaties with the United States and France were concluded, never pretended to be in any sense a text-book, and has long ceased to be of practical utility. Some valuable remarks upon the question were contained in a pamphlet, pub-

lished by the late Sir George Cornewall Lewis in 1859, but he referred almost exclusively to the theory of the subject. No attempt has hitherto been made to collect and compare the cases decided in England and the countries with which in this matter she is most closely connected.

Having been engaged in the three most recent cases in England, I have given a good deal of study to the subject, and I venture to hope that the results of that study, extended for the sake of completeness to the laws of America and France, may not only be useful to the members of my own profession, but may help the public to understand, and the Legislature satisfactorily to deal with, a question which becomes every year of more importance to the world.

EDWARD CLARKE.

3 PUMP COURT, TEMPLE,
December 1, 1866.

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A TREATISE

UPON

THE LAW OF EXTRADITION.

CHAPTER I.

THEORY OF THE SUBJECT.

THE subject of extradition has been discussed far more in its political than in its legal aspects. National interest, prejudice, or passion has always governed the deliberations of senates, and has sometimes affected the decisions of the courts. An attempt is made in this volume to ascertain the true principles of the question, and, as briefly as correctness will permit, to trace the history of the law in the United States, England, Canada, and France, and to indicate the rules of practice observed in each of those countries.

In discussion upon this subject, it has been often said that the majority of jurists deny the existence of any right to demand extradition. That this assertion is incorrect, will be seen by an examination of the opinions of some of the most eminent of early or recent writers.

Beginning with the great jurist who may be considered the founder of modern public law, we

find Grotius expressing a very clear opinion as to the existence of this duty :—

"Punishment, as we have said, according to the Natural Law, may be inflicted by any one who is not open to the like charge; though, no doubt, it is in conformity with civil institutions, that the delicts of individuals with regard to their own community should be left to that community, and to its rulers, to be punished or passed over, as they choose. But there is not the same full power left to them in delicts which in any way pertain to human society in general; for these other states may prosecute, as in particular states there is a prosecutor of certain offences which any one may put in motion; and much less have they such power in offences by which another state or its rulers are specially assailed, and in which, consequently, the state or the ruler have, on account of their dignity or security, a right of executing punishment as we have said. This right is not to be impeded by the state in which the offender lives, or its rulers.

"But as since states are not accustomed to permit another state to enter their territory armed for the sake of executing punishment, nor is that expedient, it follows that the city where he abides who is found to have committed the offence ought to do one of two things,—either itself being called upon, it should punish the guilty man, or it should leave him to be dealt with by the party which makes the demand; for this is what is meant by giving up, so often spoken of in history. . . . . All which passages, however, are to be understood, that the people or king are not strictly bound to give up the person, but, as we have said, to punish him. . . . . It is a disjunctive obligation," (bk. 2, c. 21, §§ 3, 4.)

Vattel lays down the same principle of a duty

either to punish the fugitive criminal, or to deliver him up to the injured state, in very explicit terms, and adds:—

"This is pretty generally observed with respect to great crimes, which are equally contrary to the laws and safety of all nations. Assassins, incendiaries, and robbers are seized everywhere, at the desire of the sovereign in whose territories the crime was committed, and are delivered up to his justice. The matter is carried still further in states that are more closely connected by friendship and good neighbourhood. Even in cases of ordinary transgressions, which are only subjects of civil prosecution, either with a view to the recovery of damages, or the infliction of a slight civil punishment, the subjects of two neighbouring states are reciprocally obliged to appear before the magistrate of the place where they are accused of having failed in their duty. Upon a requisition of that magistrate, called Letters Rogatory, they are summoned in due form by their own magistrates, and obliged to appear. An admirable institution, by means of which many neighbouring states live together in peace, and seem to form only one republic," (bk. 2, § 76.)

The principal authority quoted against the existence of this right is Pufendorf.* The citation,

* Story says ("Conflict of Laws," p. 879) that "Pufendorf explicitly denies it as a matter of right." But in the edition of 1865 this note is appended:—"For this reference to Pufendorf's opinion I must rely on Burlamaqui, (part 4, c. 3, §§ 23, 24,) not having been able to find it in his 'Treatise on the Law of Nations.' The only reference to the point which I have met with in that work is in book 8, c. 3, §§ 23, 24." In this statement and note there are four errors. Pufendorf does not explicitly deny the right. Burlamaqui does not say so. The passage, book 8, c. 3, §§ 23, 24, does not relate to the matter at all. The passage given in the text, book 8, c. 6, § 12, does expressly refer to it. Sir G. C. Lewis corrected part of the error, and referred to the proper section in the sixth chapter of Pufendorf's eighth book. But, strangely enough, he referred to

however, is erroneous, as will be seen from the following passages:—

"Among the several ways the governors of a commonwealth are involved in wars from the injuries committed by their subjects, these two, I think, will most deserve our consideration—viz., sufferance and reception. . . . . The guilt of a crime before it hath been judicially tried remains upon them who commit it; but after sentence is passed upon it, they are the criminals who neglect to put the law in execution. The case of reception, and how far the commonwealth gives reason for war against itself by receiving and defending persons who have injured others, may be seen at large in Grot., lib. 2, c. 21, §§ 3, 4, 5, 6."*

The only passage which can possibly be quoted in support of the assertion that Pufendorf denies the duty of extradition, is to be found in the least known of all his works, the treatise, "De Officio

that passage as an authority for the statement that Pufendorf holds that a state is only bound by treaty engagements, or by some special circumstance, to surrender a fugitive criminal, a proposition which the passage he quotes does not support in the least, ("On Foreign Jurisdiction," &c. 37.) Story's mistake has been copied with persistent carelessness. In Wheaton, (edition 1863,) Phillimore, (1854,) and Fœlix, the reference to Pufendorf is "Elementa, lib. 8, c. 3, §§ 23, 24." In Kent (1854) and Halleck (1861) no reference to Pufendorf is given. Woolsey (1864) gives no references at all. Egan was content to quote Story without verifying. The references of Wheaton, Phillimore, and Fœlix are incorrect. The book Pufendorf published in 1660, entitled "Elementorum Jurisprudentiæ Universalis," libri ii., (Cambridge, 1672,) only contains two books; the first comprising twenty-one definitions; the second, two axioms and five observations. Of course, no such passage as "lib. 8, c. 3, §§ 23, 24" can be found in it. The true reference to Pufendorf is given in the text.

* "Law of Nature and Nations." Trans. by Basil Kennett, D.D., Lond. 1749. "Circa receptum autem, et quatenus civitas causam belli contra se præbeat, recipiendo et defendendo eos qui in alios deliquerunt, plenedocet. Grotius, d. l. §§ 3, 4, 5, 6." "De Jure Naturæ et Gentium." Ed. Hertius and Barbeyrac. Frankfort and Leipsic, 1744.

Hominis et Civis juxta Legem Naturalem." After saying that a sovereign state is presumed to have power over its subjects, and that knowingly suffering them to commit crimes it shares their guilt; he adds, that the liability to war which a state incurs when it receives and protects fugitive criminals arises rather from special compact than from any general obligation.*

This is very far short of a denial of the duty of extradition; but upon this Burlamaqui says that it was without sufficient reason that Pufendorf made this qualification, and that the rule laid down by Grotius is well established. He himself calls it, "une obligation commune et indispensable."†

Paul Voet is another publicist whose authority has been quoted in favour of considering the rendition of criminals a matter strictly of comity, not of right. It is clear, from his writings, that the passages which have been made to bear this interpretation were caused by his strong opinion in favour of the right of any magistrate to try a criminal found in his jurisdiction, wherever the crime may have been committed. He holds that the magistrate is bound to punish such crimes; that they must be judged by the laws of the place where they were committed; but that, in assigning punishment, the magistrate is not bound to consider either the criminal's domicile, or the place of the crime. He should punish according to the quality of the fault, and the nature of the punishment imposed on that fault in his territory;

* "Ut tamen qui noxium ad se confugientem pœnæ duntaxat declinandæ causa recepit et protegit, bello peti possit; id magis ex peculiari pacto inter vicinos et socios, quam communi aliqua obligatione provenit; nisi iste profugus apud nos hostilia in eam civitatem quam deseruit machinetur," (lib. 2, c. 16.)

† "Principes du Droit de la Nature et des Gens." Par J. J. Burlamaqui. Ed. Dupin. Paris, 1821. 5 vols. "Droit des Gens," (part 4, c. 3, § 9.)

and if this be not sufficient, the criminal may be given up to the foreign magistrate. By the civil law he must be given up. But now this is hardly ever done, "nisi ex humanitate," and then with letters rogatory, to save the local jurisdiction. (Lib. 2, c. 1.)

Lord Coke's opinion is clearly against the duty of surrender. "It is holden, and so it hath been resolved, that divided kingdoms under several kings, in league one with another, are sanctuaries for servants or subjects flying for safety from one kingdom to another; and, upon demand made by them, are not, by the laws and liberties of kingdoms, to be delivered; and this, some say, is grounded upon the law in Deuteronomy, Non trades servum domino suo qui ad te confugerit," (3d Inst., p. 180.) He then gives three instances.

But it must be remarked upon this, that the words do not seem to apply to offenders against the criminal law; that the instances he gives are those of political offenders; and that there is no trace of any such resolution as he speaks of in the case of a fugitive criminal.* It must be added, that this dictum does not appear ever to have been used as an authority in an English court.

Martens says that the extradition of criminals

* "And I scarce understand Lord Coke's doctrine on this point, That foreign kingdoms, even when in league with one another, are sanctuaries for any subjects flying from one another. How has he supported it? He says, 'It is holden, and so it hath been resolved,' but he neither tells us *when* nor *where* it was resolved. His examples from history are far from proving the point. The first, from Queen Elizabeth's time, shows good political reasons why her demands were not complied with, because she had before done what she complained of. That from Henry VIII. does not seem to prove anything, and that about Pool, the Earl of Suffolk, proves (if anything) the point I am contending for, and consequently is in the teeth of Lord Coke's own assertion."—*Wynne, Eunomus,* Dialogue iii. § 67. Wynne goes on to say that the assertion is directly against the law of nations, and that if a special treaty be made, it operates as a recognition,

is not a matter of perfect obligation in a free state, whether the criminal be a subject of the state on which the demand is made, or of that which makes it, or of a third state.

"Mais l'extradition d'un étranger sujet de l'état qui la reclame pour un crime commis chez lui ou même contre lui, quoique non fondée dans la rigueur de la loi naturelle, s'accorde plus fréquemment soit en vertu de traités, soit même par une simple déference ou moyennant des reversales; surtout lorsque l'individu se trouve au service de cet état."—*Précis au Droit des Gens*, lib. 3, c. 3, § 101.

This is only a very qualified denial of the right, which, on the other hand, is asserted in express terms by Rutherforth.

"What remains, therefore, for the nation to do is what the injured nation has a right to demand. He ought to be delivered up to those against whom the crime is committed, that they may punish him within their own territories. This is the right. But how far a nation that has been injured in itself or in its members will choose either to insist on this right at first by demanding the criminal, or to support it afterwards by force if the demand be not complied with, depends upon its own discretion," (bk. 2, c. 9, § 12.)

The two great jurists of America are in accord upon this subject, for there can be no reason why the opinion of Story upon the operation of a law

not a creation of right. In the judgment in Commonwealth *v.* Deacon, 10 Serj. & Rawl., (U.S.,) 145, Chief-Justice Tilghman quoted Coke, and Wynne's Comment, and added, "Although Lord Coke was as great a common lawyer as England ever produced, yet certainly he was not equally proficient in his knowledge of equity or of the law of nations. Perhaps indeed his attachment to the common law gave him a prejudice against all others. Yet when he says a matter has been resolved, I should think he might be relied on, for he certainly was not apt to speak without book."

of extradition among the states of the Union should not be applied to the more general question. He says:—

"However the point may be as to foreign nations, it cannot be questioned that it is of vital importance to the public administration of criminal justice, and the security of the respective states, that criminals who have committed crimes therein should not find an asylum in other states, but should be surrendered up for trial and punishment. It is a power most salutary in its general operation, by discouraging crime, and cutting off the chances of escape from punishment. It will promote harmony and good feelings among the states, and it will increase the general sense of the blessings of the national government. It will, moreover, give strength to the great moral duty which neighbouring states especially owe to each other, by elevating the policy of the mutual suppression of crime into a legal obligation. Hitherto it has proved as useful in practice as it is unexceptionable in its character."—*Story on the Const.*, § 1803.

Kent quotes the opinions of Grotius, Vattel, and others, and then adds:—

"The language of these authorities is clear and explicit, and the law and usage of nations as declared by them rests upon the plainest principles of justice. It is the duty of the government to surrender up fugitives upon demand, after the civil magistrate shall have ascertained the existence of reasonable ground for the charge, and sufficient to put the accused upon his trial. The guilty party cannot be tried and punished by any other jurisdiction than the one whose laws have been violated, and therefore the duty of surrendering him applies as well to the case of the subject of the state surrendering as to the case of a subject

of the power demanding the fugitives."—*Commentaries*, edit. 1854, p. 40.

To these citations may be added the opinions of three Englishmen, all, from their position and character, entitled to be listened to upon such a subject.

Lord Brougham said in the House of Lords on the 14th of February 1842:—"He thought the interests of justice required, and the rights of good neighbourhood required, that in two countries bordering upon one another, as the United States and Canada, and even that in England, and in the European countries of France, Holland, and Belgium, there ought to be laws on both sides giving power, under due regulations and safeguards to each government, to secure persons who have committed offences in the territory of one and taken refuge in the territory of the other. He could hardly imagine how nations could maintain the relationship which ought to exist between one civilised country and another without some such power."

Lord Campbell, upon the same occasion, said:—"For his own part, he would like to see some general law enacted, and held binding on all states, that each should surrender to the demands of the others all persons charged with serious offences except political. This, however, he feared, was a rule or law which it would be difficult to get all nations to concur in."*

And in the most valuable of his works Sir George Cornewall Lewis thus laid down the increasing obligation of the duty:—

"A customs league, (such as the German Zollverein,) and treaties of international postage, copyright, and the extradition of criminals, afford other instances of an infraction of the principle of na-

* Hansard, lx. 319, 325.

tional exclusiveness, and of an approximation to the formation of all nations into a combined political system. These examples will suffice to show the close connexion which subsists between the progress of civilisation and the relaxation of the national principle, so as to render it consistent with a more enlarged principle of association." —*Methods of Observation and Reasoning in Politics*, ii. 454.

It has been said by some recent writers, that the existence of any duty of extradition is negatived by the treaties which have been made upon the subject. This clearly is a *non sequitur*—a treaty may often be necessary to regulate and limit the performance of a duty of undisputed obligation; and that the granting of extradition is, if not scientifically speaking a matter of perfect obligation, at least a duty of public morality, has not been denied by any writer worth notice. It is evident that the reasons assigned by early writers for the performance of this duty have in the progress of society been constantly acquiring greater weight. The complexity of business transactions, the vast extension of credit, the general use of paper-money of various kinds, all make it easy for a modern criminal to commit a fraud which may cause far more wide-spread misery than a similar act could formerly have produced, and to insure at least a few hours' concealment of his guilt. And other improvements, the use of steam, the multiplication of means of locomotion, make it easy for him in those few hours to effect his escape to a foreign country. While the duty of extradition has thus been increasing in weight, the general tendency of European legislation has been to take from the sovereign the right to grant the surrender by his own prerogative. It has thus been found necessary to make provision by treaty or legislative

enactment for the performance of this duty; and in no country but England has this been found difficult. In England, however, objections have constantly been raised to the acts and treaties proposed. So far as the objectors bring forward any reason beyond rhetorical and quite inapplicable disquisitions upon national independence, they rely chiefly upon the possibility that a treaty may be abused for the purpose of procuring the rendition of political offenders. That question will be discussed in a later chapter; here it is sufficient to say, that no treaty can prevent its own infraction. If a nation cannot be trusted, no treaty is of any use; if it can, it is very easy to agree upon provisions by which the desires of both parties may be met.

It has been recently suggested that, instead of granting the extradition of criminals, the domestic law should be extended to crimes committed abroad. But for this suggestion, the subject of extra-territorial jurisdiction in criminal matters would hardly be worth discussion in England. True it is that many of the Continental States punish crimes committed by their own subjects, or even by foreigners in other countries, and to some slight extent England has adopted the practice. But there are two answers to the argument that its extension would be a substitute for laws of extradition:—In the first place, it does not remove the evil. The being made a resort for foreign malefactors is as great a mischief to any country as the escape of offenders against its own laws. The extradition treaty between England and France, for instance, is intended to remedy both these evils. No extension of extra-territorial jurisdiction could have the same effect. Neither country could reclaim its criminals, and Englishmen would wisely think that it was very little

advantage to them to be able to try a Frenchman for crimes with which England had nothing to do, or to know that if witnesses were sent over to Paris, the English fugitive might possibly be punished there for the fraud committed in London. The other objection to the system is, that it is ineffective and unjust. It is an indisputable principle of English jurisprudence, that crime must be tried by the law of the place at which it was committed; our tribunals would therefore have to administer foreign laws. The expense of prosecution, always heavy, would become prohibitive if witnesses had to be conveyed to a foreign country; and, most serious objection of all, in the great majority of cases, it would be impossible for an innocent man, so accused, to obtain the evidence which he might require for his defence.

From the passages just quoted, and many others of similar import, the following conclusions may be drawn:—

The surrender of fugitive criminals is an international duty. It may not be so plainly a matter of right that the refusal to grant it should subject a nation to the penalty of war, but such refusal is so clearly injurious to the country which refuses, and to the whole world, that it is a serious violation of the moral obligations which exist between civilised communities.

In former times, the surrender was granted by a sovereign in virtue of his own prerogative; but the recent course of European legislation has been to restrain this prerogative, and to cast upon the legislature of a country the task of providing for the performance of this duty.

This provision should be guarded by the exclusion of political offenders, and the requirement of some evidence of guilt before the accused person is delivered up. It would be wise also to restrict

the crimes for which surrender should be granted, according to the facility with which criminals could escape from one country to another; but to refuse to make provision at all, would be to inflict an injury upon the whole world, and especially upon the country so refusing.

The surrender, when so restricted, involves no interference with national independence, as the duty of punishing the crime could not be effectively and justly performed by any nation but that whose laws have been broken.

For the only substitute for extradition which has been proposed — the extension of extra-territorial jurisdiction — is contrary to sound and well-established principles of law, is inconvenient in its enforcement, obstructs the course of justice by making the prosecution of crime difficult and expensive, and is unjust to the accused by making it almost impossible for an innocent man to produce the confutation of the charge; thus combining the gravest defects possible in a system of criminal jurisprudence.

CHAPTER II.

EARLY TREATIES AND CASES.

WITHOUT some history of the practice of extradition, so far as it existed in early times, this book would be incomplete; but the materials for such a history are very scanty, and the few instances produced by different writers in proof or disproof of the duty of rendition are in most cases of doubtful application. The historic origin of the practice is to be found in the relations of the different pro-

vinces of the Roman Empire. Under the Republic, a Roman citizen accused of a capital offence might, at any time before decision was pronounced, escape the sentence by going into voluntary exile; and certain of the allied cities were specified by treaty as inviolable places of refuge.* Under the empire these cities were absorbed into the imperial dominions, and lost their protective character. Few passages of Gibbon have been more often and more deservedly quoted than the splendid sentences in which he described the wide-reaching power of the imperial government:—

"The division of Europe," he says, "into a number of independent states, connected however with each other by the general resemblance of religion, language, and manners, is productive of the most beneficial consequences to the liberty of mankind. A modern tyrant, who should find no resistance either in his own breast or in his people, would soon experience a gentle restraint from the example of his equals, the dread of present censure, the advice of his allies, and the apprehension of his enemies. The object of his displeasure, escaping from the narrow limits of his dominions, would easily obtain, in a happier climate, a secure refuge, a new fortune adequate to his merit, the freedom of complaint, and perhaps the means of revenge. But the empire of the Romans filled the world, and when that empire fell into the hands of a single person, the world became a safe and dreary prison for his enemies. The slave of imperial despotism, whether he was compelled to drag his gilded chain in Rome and the senate, or to wear out a life of exile on the barren rock of Seriphus, or the frozen banks of the Danube, expected his fate in silent despair.

* Gibbon, "Decline and Fall," v. 296; Merivale, "History of the Romans under the Empire," iii. 496.

To resist was fatal, and it was impossible to fly. On every side he was encompassed with a vast extent of sea and land, which he could never hope to traverse without being discovered, seized, and restored to his irritated master."*

So far, however, as regarded claims of extradition made by the Romans upon independent nations, they seem to have been confined to enemies of the state. Thus, at the end of the war with Antiochus, King of Syria, the Romans stipulated by treaty for the delivery up of Hannibal and four Greeks who had been instrumental in promoting the war. Hannibal, however, then escaped.† He was afterwards demanded of the King of Bithynia, and the demand conceded; but he escaped the surrender by death. ‡

The Roman law, however, required the surrender of citizens who offered violence to foreign ambassadors on Roman territory. Under this law two Romans were surrendered to the Apolloniatæ in 266 B.C., and two others to the Carthaginians in 188 B.C. §

In the early cases found in modern history, it was always for political offences that the surrender was claimed; indeed, at a time when the transactions of life were comparatively simple, crime was so easily detected, and the criminal had so few means of escape, that there was no necessity for those provisions which the complicated civilisation of the world now renders necessary.

A few treaties have been quoted by writers upon extradition, either as recognitions of the duty, or in disproval of the right. By a treaty concluded as early as 1174, between Henry II. of England and

* "Decline and Fall," c. 3, *ad fin.*

† Polyb., xxi. 14, xxii. 26. ‡ Livy, xxxix. 51.

§ Dig., 50, 5, 17. Rein, "Criminalrecht der Römer," p. 175-6. Quoted by Sir G. C. Lewis, "On Foreign Jurisdiction," p. 51.

William of Scotland, it was agreed, that if any persons guilty of felony in England should fly into Scotland, they should be immediately seized, and either be tried in the King of Scotland's courts, or delivered up to the justices of England, and *vice versâ*.*

By the Treaty of Paris, concluded in May 1303 between England and France, it was agreed that neither sovereign should grant protection to the enemies of the other.† And by a treaty made by Charles V. of France with the Duke of Savoy in 1378, it was provided that all malefactors who had fled from Savoy to Dauphiny, or from Dauphiny to Savoy, should be delivered up even if they were subjects of the state surrendering them.

The Intercursus Magnus concluded between Henry VII. and the Flemings, in 1497, provided against the harbouring by one power of the rebels of another. Its provisions and effects will best be described in Bacon's words:—

"This is that treaty which the Flemings call to this day Intercursus Magnus; both because it is more complete than the precedent treaties of the third and fourth year of the king, and chiefly to give it a difference from the treaty which followed

* Ward, "Hist. of the Laws of Nations," ii. 319; Rym., i. 39; M. Par., 131, 37.

† Fœlix says he can find no trace of this treaty, ii. 327 *n*. See Hallam, "Mid. Ages," i. 44. The article is thus printed in Rymer, tom. ii. 927—31 Edw. I., A.D. 1303:—"Item, accorde est que l'un ne receptera, ne soustendra, ne confortera, ne sera confort, ne ayde aus enemis de l'autre; ne ne souffera qe il aient confort, secours, ne ayde (soit de gents d'armes, ou de vitailles ou d'autres choses, queles qe eles soient) de ses terres, ne de sun poair; mais defendra sur peine de forfaiture de corps et d'avoir, et empeschera a tout sun poair, loialment et en bone foi, qe les ditz enemis ne soient receptez, ne confortez es terres de sa seigneurie, ne de sun poair. Ne que il en aient confort, secours, ne ayde (soit de gents d'armes, de chevaux, d'armeur) anzois les fera vender dedens quarante jours apres ce qe il en ferra requis."

in the one-and-twentieth year of the king, which they call Intercursus Malus.

"In this treaty there was an express article against the reception of the rebels of either prince by other; purporting that if any such rebel should be required by the prince whose rebel he was of the prince confederate, that forthwith the prince confederate should, by proclamation, command him to avoid his country; which, if he did not within fifteen days, the rebel was to stand proscribed, and put out of protection. But nevertheless, in this article Perkin (Warbeck) was not named, neither perhaps contained, because he was no rebel. But by this means his wings were clipt of his followers that were English."*

On the 23d February 1661, a treaty was made between Charles II. and Denmark, by which the latter agreed to deliver up, on requisition, all persons who had been concerned in the murder of Charles I. The states-general of Holland delivered up some of the regicides without any treaty stipulations; but in 1662 (14th September) a treaty was made by which they agreed to give up any persons excepted from the English Act of Indemnity, and all other persons demanded by the English Government.

Under this treaty a demand was made by James II., in 1687, for the extradition of Burnet, who was then acting as private secretary to the Prince of Orange, and who, for various violent writings against the king, had recently been cited before a Scottish court, and not appearing, had been outlawed. The circumstances of the case, as related by Burnet himself, and with due allowance made for that fact, are very interesting, and the decision of the states-general may be compared with ad-

* "Hist. of Henry VII." Bacon's Works. Ed. Spedding, Ellis & Heath, 6, 173.

vantage with some of the recent judgments upon this subject. The English ambassador (Albeville) having demanded Burnet's banishment from the United Provinces, the deputies of the States of Holland called upon him to make answer. He claimed the protection of the states as a naturalised subject.* If he was charged with any offence against the laws of the provinces he would submit to trial. He could not be considered a fugitive or rebel; he had left England three years before with the king's leave, and had not been in Scotland for fourteen years. As to the sentence which had been passed against him he could say nothing to that until he saw a copy.

The states hereupon ordered their ambassador to represent to James that naturalisation was a sacred thing, and that if he had anything to lay to Burnet's charge justice should be done in their courts. Albeville then presented another memorial, in which the article of the treaty was set forth:—

"It was insisted on that since the states were bound not to give sanctuary to fugitives and rebels, they ought not to examine the grounds upon which such judgments were given, but were bound to execute the treaty. Upon this it was observed that the words in treaties ought to be explained according to their common acceptation, or the sense given them in the civil law, and not according to any particular forms of courts, where for non-appearance a writ of outlawry or rebellion might lie; the sense of the word 'rebel,' in common use, was a man that had borne arms, or had plotted against his prince; and a 'fugitive' was a man that fled from justice." †

It is obvious that these treaties prove little one

* He had obtained naturalisation just before, on receiving news of the commencement of proceedings in Scotland.

† Burnet, "History of his own Time," (Ed. 1833,) i. 730.

way or the other. They mostly relate to political offenders, who were given up not as criminals but as enemies of the sovereign, and it would be attaching far too much importance to the treaties of 1174 and 1378, to take them as a proof of a necessity for treaty stipulations to justify the demand of the surrender of a criminal.

Most of the cases of extradition, demanded in the absence of treaties, are equally inconclusive.

The delivery up of the Count de St Pol to Louis XI., by Charles Duke of Burgundy, in violation of his own letters of safe conduct; the surrender of the Earl of Suffolk, by the King of Spain, to Henry VII., upon the ill-kept promise that his life should be spared; and the promise of Elizabeth either to deliver up Bothwell to the Scots, or to send him out of the kingdom, prove as little on one side as the refusal of the King of Scotland to give up Perkin Warbeck; of the King of France, in 1584, to give up to Elizabeth, Morgan and other Englishmen who were said to be plotting in France against England, and that of France to deliver up Cardinal Pole to Henry VIII., do upon the other.

In 1588 Farnihurst was demanded by Elizabeth from the King of Scotland, he being charged with having been instrumental in the murder of Sir John Russell, the eldest son of the Earl of Bedford. The king refused to deliver him up except upon conviction by a fair trial, but he caused him to enter into ward in the town of Aberdeen.*

After the Restoration the States of Holland gave up some of the regicides before any treaty for that purpose had been made; but others took refuge in Switzerland, which declined to surrender them.

The most notable instance of the surrender of a political offender in recent times is that of Napper Tandy, who, being attainted of treason, was given

* Sir W. Scott's "Hist. of Scotland," ii. 33.

up by the senate of Hamburg on the demand of the English Government in 1792. He was tried in Dublin and acquitted.*

At the present time Spain and other countries, with which England has no treaties of extradition, occasionally give up criminals upon requisition by the British authorities.

As to the common law of England, upon the duty of according extradition, five cases have been cited:—Rex *v.* Hutchinson, (3 Keble, 785,) Rex *v.* Lundy, (2 Ventris, 314,) Rex *v.* Kimberley, (2 Stra, 848,) East India Co. *v.* Campbell, (1 Ves. Senr., 246,) and Mure *v.* Kaye, (4 Taunt, 34.)

Of these cases the first three do not touch the subject of extradition at all. In Hutchinson's case the prisoner was accused of murder, committed in Portugal, and he was remanded upon the contention of the attorney-general, that the offence being without the dominions of the crown, was triable by constable and marshal, and not by commission.

In the cases of Lundy and Kimberley, the only point decided was that Ireland came within the proviso of the Habeas Corpus Act, that persons accused of crime in any part of the king's dominions might be sent thither for trial.

In neither of the other cases was a decision as to the legality of extradition necessary, but in each a very clear opinion was expressed. The case of the East India Co. *v.* Campbell was tried in 1749, on the equity side of the Court of Exchequer, Lord Chancellor Hardwicke and Chief Baron Parker taking part in the decision. It was there laid down in the judgment of the whole court, that "the Government may send a prisoner to answer for a crime wherever committed, that he may not involve his country, and to prevent reprisals." Mr Justice Heath, whose opinion on

* Howell's "State Trials," 1191.

this point was given in Mure *v.* Kaye, (1811,) was a judge of very high reputation, and his dictum was not dissented from by the other members of the court.

He said—"As to the first point, it has generally been understood that wheresoever a crime has been committed the criminal is punishable according to the *lex loci* of the country against the law of which the crime was committed, and by the comity of nations the country in which the criminal has been found has aided the police of the country against which the crime was committed in bringing the criminal to punishment. In Lord Loughborough's time the crew of a Dutch ship mastered the vessel, and ran away with her, and brought her into Deal, and it was a question whether we could seize them and send them to Holland, and it was held we might, and the same has always been the law of all civilised countries."

In an opinion given to the Government in 1792, by Serjeant Hill, upon the question of the king's prerogative to expel aliens from the kingdom, the same doctrine is very clearly laid down :—"As to subjects of states in amity, I think the king hath no power over any, if they do not offend his laws, but such as are charged by the states whose subjects they are with high-treason, murder, or defrauding their state, or other atrocious crimes. And as to them, if the sovereign of such state applies to have them delivered up, I think his majesty is, by the constitution, invested with the power of granting or refusing the application, and if granted, may issue a proclamation either to quit his dominions, or else may order them to be apprehended, and sent in safe custody and delivered to such persons as the sovereign of the state to which they belong shall appoint; and if any of them should procure a writ of Habeas Corpus, the

special matter might be returned, and they would not be entitled to be discharged, for this is warranted by the practice of nations, and is therefore not part of the legislative, but of the executive power, which is vested solely in the king, who, as observed by a late learned judge, (1 Bl. Comm. 253,) with regard to foreign concerns is representative of his people, and what is done by the royal authority with regard to foreign powers (he adds) is the act of the whole nation; and the prerogative in this respect has always been taken to be so clear that no foreigner ever contested it in the English courts of justice, and the Habeas Corpus appears to have been designedly so penned as not to interfere with it, for the prohibition in that act, (sec. 9 and 12,) against removing persons from one prison to another, or sending them abroad, is confined to subjects of this realm, whereas all the other provisions of the act extend to all persons and all prisoners, without once mentioning the subjects of the realm, and therefore all the others are intended to extend to aliens, and this not so."*

Upon the authority of E. I. Co. *v.* Campbell, and Mure *v.* Kaye, it is laid down, in Chitty on the Criminal Law, (1826,) that "an English magistrate may also cause to be arrested, and committed for trial, an offender against the Irish law, or accused of having perpetrated a crime in a foreign country," (p. 14;) and "if a prisoner, having committed a felony in a foreign country, come into England, he may be arrested here and conveyed and given up to the magistrates of the country against the laws of which the offence was committed," (p. 16.)

These opinions may have been correct, but they have ceased to be law now. If any magistrate were now to arrest a person on this ground, the

* *Edinb. Review*, xlii. 141.

validity of the commitment would certainly be tested, and, in the absence of special legislative provisions, the prisoner as certainly discharged upon application to one of the superior courts.

CHAPTER III.

HISTORY OF THE LAW IN THE UNITED STATES.

For various reasons, the record of the Acts passed and the cases decided in the United States is entitled to the first place in a history of the modern law and practice of extradition. At the formation of the Union, the question of the rendition of criminals who fled from one state to another to escape the vengeance of the laws they had transgressed, was one of the difficulties with which the founders of the great republic had to deal. The proximity of Canada, and the length of boundary line which made the flight of the criminal so difficult to intercept, soon raised the question from one of local administration to one of national policy. Men were found quite equal to deal with either. The American judicial bench has been adorned by men who added the lawyer's knowledge to the statesman's thought, and who, bringing both to bear on the questions of public law, have left us works of enduring value. In the matter of extradition, the American law is better than that of any country in the world; and the decisions of the American judges are the best existing expositions of the duty of extradition, in its relations at once to the judicial rights of nations and the general interests of the civilisa-

tion of the world. A few words will suffice with regard to the domestic aspect of the question in the Union. Before the Revolution, a criminal who committed a crime in one of the colonies and fled to another was arrested, wherever found, and sent for trial to the place where the offence was committed.* And the second section of the fourth article of the Constitution of the Union, substantially repealing a clause in the fourth article of Confederation, declared, that "A person charged in any state with treason, felony, or other crime, who shall flee from justice and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime." In 1791 a doubt was raised by Virginia as to the person to whom the demand should be addressed, and the mode in which it should be made. To remove this doubt, the Act of Congress of 12th February 1793 was passed. That Act made provision for the rendition of fugitives from justice and of fugitive slaves. The first section concerned criminals only, and declared that on demand made, accompanied with a copy of indictment found or affidavit made before a magistrate, charging the person with having committed "treason, felony, or other crime," and certified by the governor or chief magistrate of the demanding state to be authentic, it should be the duty of the executive magistrate of the state to which the person had fled to cause him to be arrested and secured, and notice thereof given, and the person then to be delivered to the agent of the executive making the demand, if such agent should appear within six months. If no such agent appeared, the prisoner should be discharged," (2 Congress, Sess. 2, ch. 7.) This still

* Chief-Justice Tilghman, 10 Serj. & Rawl., 129.

remains the law of the United States. Few questions of any importance have arisen upon it, none that sufficiently affect the general question of extradition to need discussion here.

The first case in America in which the question of the duty of the extradition of criminals, independently of any treaty obligations, was discussed, was that of the Chevalier de Longchamps in 1784.* The circumstances of the case and of the demand of extradition were peculiar. The Chevalier de Longchamps was indicted before the Court of Oyer and Terminer at Philadelphia for threatening bodily harm to M. Marbois, the Consul-General of France in the United States, and Secretary to the French legation, and also for an assault upon him. It appeared that M. de Longchamps went to M. Marbois, at his official residence, and using violent language, threatened to dishonour him, ("Je vous deshonerera, Policon, Coquin,") and two days later, as they were talking together in a public place, he struck with his stick the cane which M. Marbois held in his hand. The jury at first found the prisoner guilty of the assault only, but, being desired by the court to reconsider the matter, they returned a verdict against him on both counts. The President (Washington) and the supreme executive council thereupon informed the judges that the minister of France demanded that M. de Longchamps, having appeared in the uniform of a French officer, and called himself an officer in the service of his majesty, should be delivered up to him for these outrages, to be sent to France. Two questions were submitted to the judges:—1. Could he be lawfully delivered up? 2. If not, whether he ought not to be kept in prison until his most Christian majesty should declare the reparation satisfactory?

* Respublica *v.* Longchamps, 1 Dallas, 120.

Sentence was postponed, and these questions were fully argued on the 10th and 12th July 1784. On the 7th October judgment was given, that, 1. He could not lawfully be delivered up. The court, however, added, "We think cases may occur where the council could *pro bono publico*, and to prevent atrocious offenders evading punishment, deliver them up to the justice of the country to which they belong, or where the offences were committed." 2. The demand that he should be kept in prison until the King of France should declare the reparation satisfactory could not be complied with, as by the law of America the punishment must be certain and definite. A very heavy sentence was, however, passed. M. de Longchamps was fined one hundred French crowns, and sentenced to imprisonment until the 4th July 1786, making a little over two years. He had further to find security to keep the peace for seven years, to pay the costs of the prosecution, and to remain committed until the sentence was complied with. It must be remembered, in explanation of the President's action in this matter, and perhaps of the severity of the sentence, that at this time there was special political reason in America for the desire to keep on good terms with France. The decision, however, was clearly right. No treaty required the rendition of the offender; his offence could only technically be called an offence against the King of France; the assault was committed on American soil, and the whole matter was clearly within the cognizance of American tribunals.

In this same year (1784) the legislature of Virginia passed an Act, which seems to show that the question of the power of an individual state of the Union to grant or demand extradition had already arisen. It provided for the surrender of

any of her citizens who should go beyond the limits of the United States, and commit crimes within the jurisdiction of a foreign nation. But it was by this act left to Congress to decide for what crimes extradition ought to be granted.*

In 1791, the Governor of South Carolina requested the President of the United States to demand of the Governor of Florida certain persons who had fled thither after having committed crimes in South Carolina. Mr Jefferson, then Secretary of State, in his report to President Washington, said, "England has no convention with any nation for the surrender of fugitives from justice, and their laws have given no power to the executive to surrender fugitives of any description. They are accordingly constantly refused, and hence England has been the asylum of the Paolis, the La Mottes, the Calonnis; in short, of the most atrocious offenders, as well as of the most innocent victims who have been able to get there. The laws of the United States, like those of England, receive every fugitive, and no authority has been given to our executives to deliver them up. If, then, the United States could not deliver up to General Quesnada (Governor of Florida) fugitives from the laws of his country, we cannot claim as a right the delivery of fugitives from us. And it is worthy of consideration whether the demand proposed to be made in Governor Pinckney's letter, should it be complied with by the other party, might not commit us disagreeably, and perhaps dishonourably."†

These expressions implied a desire for the alteration of the law upon this matter,‡ and may have

* 11 Hen. Stat. c. 24, p. 471; Robinson's Practice, i. 7.

† Quoted by Mr Van Ness, in Holmes *v.* Jennison, 14 Peters, 548.

‡ A few years later, in 1797, the Attorney-General of the

helped to bring about the insertion of an article on the subject of extradition in the treaty, often spoken of as Jay's Treaty, which was concluded between the United States and Great Britain in 1794. This article, the 27th, was as follows:—"It is further agreed, that her Majesty and the United States, on mutual requisitions by them respectively, or by their respective ministers or officers authorised to make the same, will deliver up to justice all persons who, being charged with murder or forgery, committed within the jurisdiction of either, shall seek an asylum within any of the countries of the other, provided that this shall only be done on such evidence of criminality, as, according to the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the offence had there been committed. The expense of such apprehension and delivery shall be borne and defrayed by those who make the requisition and receive the fugitive."* By the succeeding article it was provided that this clause of the treaty should only exist for twelve years. At the expiration of that time the relations between the two countries were so unfriendly that no attempt was made to renew the treaty. And the circumstances of the only case of importance in which the requisition had been made, had aroused feelings in America strongly opposed to any such renewal. This was the case of Jonathan (or

United States gave his official opinion that it was the *duty* of the United States to deliver up, on due demand, heinous offenders, being fugitives from the dominions of Spain; and that as the existing laws of the Union had not made any specific provision for the case, the defect ought to be supplied.—Opinion of the Attor.-Gen., i. 46.

In 1821 a different opinion was given on similar authority.—Opinions, &c., i. 384–392.

* Public Statutes at Large of the United States. Ed. Richard Peters, viii. 129.

Nathan) Robbins,* who was demanded by the British Government in 1799, on a charge of murder. Robbins had been, some years before, one of the crew of H.M.S. *Hermione*, which was taken possession of by mutineers, who, after killing some of the officers, carried the vessel into a Spanish port. On this charge Robbins was imprisoned at Charleston, under a warrant of the district judge of South Carolina. He had been imprisoned six months when he was brought before the court on habeas corpus. The Secretary of State addressed a letter to the judge, mentioning that application had been made by the British minister to the President for the delivery of Robbins according to the treaty, and adding, "the President advises and requests you to deliver him up." The case having been fully heard, the judge ordered the marshal to deliver Robbins to the British consul, and he was thereupon delivered up, carried to Jamaica, tried by court-martial, and hanged in chains. Popular feeling had been greatly excited by the case, and although the evidence of guilt had been overwhelming, and the question carefully tried, a vigorous attack was made upon the President (Adams) for his interference in the matter. He was defended in the House of Representatives by Mr Marshall, (afterwards Chief Justice of the Supreme Court of the United States,) in a speech which made the speaker famous, and which is a fine model of close and thoughtful reasoning; but the public feeling was so strong that the incident had a considerable effect on the result of the contest for the presidency between Adams and Jefferson in 1801.

From 1806 to 1843 no treaty provisions as to extradition existed between Great Britain and the United States, but during this period four cases

* Wharton's State Trials, 392–456; Bee, Adm. Rep., 267.

were brought before the American tribunals, which, from the magnitude of the questions involved, and the great repute of some of the judges whose opinions were expressed, are deserving of careful note.

The first was the case of Daniel Washburn,* in 1819. Washburn was arrested in the United States, on a charge of *theft* in Canada, and was brought before Chancellor Kent upon a habeas corpus.

The Chancellor held that irrespective of all treaties it was the duty of a state to surrender fugitive criminals. It was the duty of a magistrate, irrespective of legislative provisions upon the subject, to commit the fugitive upon due proof of the commission of a crime, so as to afford time to the government to deliver him up, or to the foreign government to claim him. If this claim were not made within a reasonable time, the prisoner would be entitled to his discharge on habeas corpus; the judicial power would have fulfilled its duty by affording the opportunity. It did not matter, he added, whether the prisoner was a subject of the pursuing government or of that under which he had taken refuge. He then reviewed at considerable length the authorities and cases on the subject; and with reference to the argument that even if the duty of extradition existed, it must be held to be limited to the cases of murder and forgery, which had been included in the treaty of 1794, he decided that that treaty was merely declaratory, and that, even if during its existence the principle "enumeratio unius est exclusio alterius" applied, at its expiration the general and wider law revived.

This judgment carried the doctrine of the duty of extradition to its fullest possible extent, declaring not only that treaties might declare or limit,

* 3 Wharton's Crim. Trials, 473; 4 Johnson, Ch. Rep., 106.

but did not create it, but that it was of so high and imperative a nature that in the absence of municipal laws for its enforcement it was itself a law which judges were by virtue of the nature of their office bound to recognise and administer. No later decision has gone quite to this extent, but it is hardly correct to say that the judgment has been overruled by a superior weight of authority. The judgments usually quoted in support of this assertion are rather apparently than really opposed to the ruling of the Chancellor, and even where they contradict one of his dicta they leave others of equal or greater importance untouched.* The judgment generally cited as being in clearest contradiction to the decision of Kent is that of Chief-Justice Tilghman in the case of Edward Short.† But it will be seen on an examination of that judgment that it is by no means in direct opposition to that of Kent on one or two of the most important points. But before noticing that case it will be well (to keep the order of time) to mention the Act passed by the State of New York on 5th April 1822, and adopted and continued in the New York Revised Statutes i. 164; §§ 8, 9, 10, 11. This law authorised the Governor in his discretion, on requisition from a foreign government, to surrender up fugitives charged with murder, forgery, larceny, or other crimes, which by the laws of the state were punishable with death or imprisonment in the state prison, provided the evidence of criminality was sufficient by the laws of the United States to detain the party for trial on a like charge. The case of Edward Short was tried before the Supreme Court of Pennsylvania in August 1823. Short

* The principles laid down in Washburn's case were acted upon by Chief-Justice Reid, in Lower Canada, in 1827. See Fisher's case, *post*, p. 50.

† Commonwealth at the instance of Edward Short, *v.* Deacon. 10 Serj. & Rawl., 125.

was charged with having committed murder in Ireland, and was arrested in Pennsylvania at the suit of a private person, without the interference of either the government of Great Britain or that of the United States. The question for the consideration of the court was twofold—1. Was the evidence sufficient? 2. Was the commitment legal? Upon the first branch of the question the judgment was short and unimportant, but the second branch was very fully considered. Chief-Justice Tilghman, in delivering judgment, reviewed the old authorities on the subject, not finding in them so strong a concurrence of opinion in favour of the duty of extradition as had been declared by Chancellor Kent.* He urged the difficulty of establishing any common rule, arising from the different estimation of crimes in different nations, and concluded that upon the whole the safest principle seemed to be that no state had an *absolute* and *perfect* right to demand of another the delivery of a fugitive criminal, although it had what is called an *imperfect* right, that is, a right to ask it as a matter of courtesy, good-will, and mutual convenience. But a refusal to grant such request would be no just cause of war. No state, he said, had a right to ask the delivery of a fugitive for the purpose of wreaking its vengeance upon him. "All that can be said is, that unless he be given up, others may be encouraged to transgress by the hope of escaping punishment, and thus an injury may be sustained. And, indeed, in the case of neighbouring nations the argument is so strong as to be almost irresistible, except in cases attended with peculiar circumstances." He differed from Kent as to the treaty of 1794 being merely declaratory, and laid down that "the treaty gave each nation a right which did not before exist, and

* With reference to Lord Coke's opinion, see *ante*, p. 6.

which ceased at its expiration." The delivery up of a fugitive was an affair of the executive government, to which the demand of the foreign power must be addressed. The judges could not legally deliver up, nor could they command the executive to do so. No magistrate in Pennsylvania had the right to cause a person to be arrested in order to afford the President of the United States an opportunity to deliver him up, because the government had already declared that it would not do so. If the executive hereafter should be of opinion that it had the right, and was bound in duty to give a criminal up, that would be a different case, and one on which the court at present would give no opinion.

Every nation had an undoubted right to surrender fugitives; but the question then would be, Whether the President could act in such a case, or must wait for power to be given him by law? Hitherto he had believed he had not the power: if he should change that opinion, the question of his right to act would then be for the judges to decide. "Neither do I give any opinion," said the Chief-Justice in conclusion, "whether the executive of the state of Pennsylvania has the power to cause a fugitive criminal to be arrested for the purpose of delivering him up. But confining myself to the case before me, in which the arrest is made at the request of a private person, I am of opinion that there is no law to support it, and therefore the prisoner is entitled to his discharge." It will be seen, on a careful examination of this decision, that the reasons for it may almost be termed technical. The two leading doctrines in Kent's judgment were that the duty of extradition existed independently of any treaties; and that, being a part of international law, it was *ipso facto* a rule of municipal law, and one which judges were

bound to administer. Upon the first point, Chief-Justice Tilghman, while denying that extradition was a matter of perfect right, conceded that it was an international duty which, between neighbouring nations, was of almost irresistible obligation; and as to the second point, he went no further than to deny the right of the judges to arrest a fugitive when the executive had already declared that it could not order his extradition. The allusion to the fact that in this case the arrest had been made at the suit of a private person, in no way representing a foreign government, made the decision still less valuable as a precedent.

The next judgment upon a question of extradition was given by one of the greatest jurists America has produced, but it carried the law no further. In 1837, in the district court of the United States for the Massachusetts district, a prisoner was acquitted upon the ground that the offence was committed within the jurisdiction of a foreign government; and it was then suggested that the court should remand him to that foreign government for trial. Mr Justice Story, to whom the suggestion was made, said that he had never known any such authority exercised by the American courts, except where the case was provided for by the stipulations of some treaty. He had great doubts whether, upon principles of international law, and independent of any statutable provisions or treaty stipulations, a court was either bound in duty or authorised in its discretion to surrender any offender to a foreign government. The prisoner was thereupon discharged.*

The general executive having declared its inability to grant extradition, an attempt was now made to use the powers of a state executive for this purpose. In 1840 an application was made

* U. S. *v.* Davis, 2 Sumner, 485.

to the President of the United States for the extradition of one Holmes, a naturalised citizen of the United States, who was charged with having committed murder in Lower Canada. The President declined to act, through an alleged want of power, and the case came back to Governor Jennison of Vermont. Holmes having been arrested, obtained a writ of habeas corpus from the Supreme Court of Vermont, and the sheriff returned that he was detained under an order of the Governor of Vermont, which commanded the sheriff to deliver him up to the authorities of Lower Canada. The Supreme Court of Vermont held the return sufficient, and remanded Holmes into custody. On appeal to the Supreme Court of the United States, two questions were argued:—1. Whether an appeal would lie? 2. Whether the judgment of the Supreme Court of Vermont was right?

In the result the judges were equally divided, and the appeal was dismissed for want of jurisdiction. But the Supreme Court of Vermont, finding that the majority of the judges of the higher court held that the Governor of Vermont had no authority to arrest and deliver up fugitives, discharged the prisoner.*

After this judgment, it was clear that foreign governments could not, in the absence of treaty stipulations, obtain from the United States the extradition of fugitive criminals. It had been decided that the delivery up of a fugitive was an act of state within the power of the national executive only; and that the executive having declared itself unable to act in the matter, the judges would not be justified in ordering useless arrests. Whether the President had not, in the

* Holmes *v.* Jennison, 14 Peters, 540. *Ex parte* Holmes, 12 Verm. R., 630. Kent expresses strong disapproval of this decision.—Comm. i. 43.

absence of special laws, the right to act as the representative of the nation, had never been decided; but the effect of Robbins's case was not yet forgotten, and American politicians did not care to risk their popularity merely for the sake of testing a disputed power.

In the circular upon the subject of extradition issued on the 5th April 1841,* the French minister of justice mentioned the four treaties then in existence between France and Spain, Switzerland, Belgium, and Sardinia, and said that from other countries France could obtain extradition, even in the absence of treaties, except from Great Britain and the United States. The first did not grant extradition because its legislation did not allow it; the second because it was not yet settled whether the right of surrender belonged to the different states or to the general government. Both countries soon remedied, at least partially, this grave defect in their laws.

Negotiations had already been commenced between the United States and Great Britain for the conclusion of a convention upon this subject; and in the Ashburton Treaty, which was signed at Washington on the 9th August 1842, and ratified at London on the 13th October of the same year, a clause was inserted which repeated the provisions of the tenth section of the treaty of 1794,† and extended them to other crimes.

By the twenty-seventh article of the Ashburton Treaty, it was "agreed that the United States and her Britannic Majesty shall, upon mutual requisitions by them or their ministers, officers, or authorities, respectively made, deliver up to justice all persons who, being charged with the crime of murder, or assault with intent to commit murder,

* Dalloz, Jurisp. Gen. (1841,) iii. 440. Fœlix, ii. 3, and see *post*, p. 88.

† See *ante*, p. 28.

or piracy, or arson, or robbery, or forgery, or the utterance of forged paper, committed within the jurisdiction of either, shall seek an asylum, or shall be found within the territories of the other: Provided, that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the crime or offence had been there committed; and the respective judges and other magistrates of the two governments shall have power, jurisdiction, and authority, upon complaint made under oath, to issue a warrant for the apprehension of the fugitive, or person so charged, that he may be brought before such judges or other magistrates respectively,—to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of such fugitives. The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition and receives the fugitive."

In this clause there is no specific exclusion of political crimes such as will be found in the later convention with France; but in transmitting the treaty to Congress, President Tyler said,—"The article on the subject (extradition) in the proposed treaty is carefully confined to such offences as all mankind agree to regard as heinous, and destructive to the security of life and property. In this careful and specific enumeration of crimes, the object has been to exclude all political offences or criminal charges arising from wars or intestine commotions."

In England, the common law being held not to permit the surrender of a criminal, this provision could not come into effect without an Act of Parliament; but in the United States a treaty is as binding as an Act of Congress; and this article was immediately put in force. Christiana Cochran, a Scotchwoman, accused of having murdered her husband, fled to America by the very ship which conveyed thither the ratifications of the Ashburton Treaty. She was arrested, and her counsel raised a point which has often been discussed since in cases of extradition. He asked to be allowed to prove the prisoner's insanity. After full consideration, the court refused to try the question, and the prisoner was surrendered.*

On the 9th November 1843 a convention was concluded at Washington between the United States and France, by which it was agreed:—

"Art. 1. That the high contracting parties shall, on requisitions made in their name, through the medium of their respective diplomatic agents, deliver up to justice persons who, being accused of the crimes enumerated in the next following article, committed within the jurisdiction of the requiring party, shall seek an asylum, or shall be found within the territories of the other: Provided, that this shall be done only when the fact of the commission of the crime shall be so established, as that the laws of the country in which the fugitive or the person so accused shall be found, would justify his or her apprehension and com-

* Egan. 46; Opinions of Attys-Gen. iv. 202, (Cushing;) St Alban's Raid, 229; Fœlix, ii. 357, *n.* Fœlix says,—"Une femme accusée d'empoisonnement avait passé de Liverpool à New-York: pour refuser l'extradition, on faisait valoir son état d'aliénation mentale."

The most instructive case upon the subject of the production of evidence for the prisoner is that of the St Alban's Raid. See *post*, p. 61.

mitment for trial, if the crime had been there committed.

"Art. 2. Persons shall be so delivered up who shall be charged, according to the provisions of this convention, with any of the following crimes, to wit: murder, (comprehending the crimes designated in the French penal code by the terms assassination, parricide, infanticide, and poisoning,) or with an attempt to commit murder, or with rape, or with forgery, or with arson, or with embezzlement by public officers, when the same is punishable with infamous punishment.

"Art. 3. On the part of the French government, the surrender shall only be by authority of the keeper of the seals, minister of justice; and on the part of the government of the United States, the surrender shall be made only by the authority of the executive thereof.

"Art. 4. The expenses of any detention and delivery effected in virtue of the preceding provisions, shall be borne and defrayed by the government in whose name the requisition shall have been made.

"Art. 5. The provisions of the present convention shall not be applied in any manner to the crimes enumerated in the second article, committed anterior to the date thereof, nor to any crime or offence of a purely political character."

On the 24th of February 1845, the following additional article to the above convention was concluded at Washington:—

"The crime of robbery, defining the same to be the felonious and forcible taking from the person of another, of goods or money to any value, by violence or putting him in fear; and the crime of burglary, defining the same to be, breaking and entering by night into a mansion-house of another, with intent to commit felony; and the correspond-

ing crimes included under the French law in the words *vol qualifié crime,* not being embraced in the second article of the convention of extradition concluded between the United States and France on the 9th of November 1843, it is agreed by the present article, between the high contracting parties, that persons charged with those crimes shall be respectively delivered up, in conformity with the first article of the said convention; and the present article, when ratified by the parties, shall constitute a part of the said convention, and shall have the same force as if it had been originally inserted in the same."*

Only one case of importance has arisen in the United States upon each of these conventions. The first was that of Nicholas Lucien Metzger, who was accused of having committed forgery in France, and whose extradition was demanded by that country in 1847. The French minister first applied to the executive, who declined to interfere in the matter, and referred him to the judicial authorities. Metzger was then arrested and brought before a local magistrate of New York, who decided that he had authority over the case, and committed him to prison; but he was liberated by a circuit judge of that state, who held that the state judiciary had no jurisdiction. He was then brought before Judge Betts, a district judge of the

* A supplemental convention between the United States and France, signed the 10th February 1858, extended the provisions of the treaty to principals, accessories, and accomplices in the following crimes:—"Forging, or knowingly passing or putting in circulation counterfeit coin, or bank-notes, or other paper current as money, with intent to defraud any person or persons; embezzlement by any person or persons in the employ of a society or corporation legally constituted,—when these crimes are subject to infamous punishment." It is somewhat singular that fraudulent bankruptcy is excluded from the treaties of extradition of the United States, though included in those of most European nations.

United States, sitting in chambers, who committed him, after hearing a full argument. Judge Betts held, that as the treaty was the supreme law of the land, it was entitled, when coming before the courts, to the same effect as an Act of Congress, though no Act had been passed to define the method of its operation; that under such treaty a fugitive was subject to apprehension and commitment for a crime committed against the laws of the country demanding him, whether such crime were an offence in the country to which he had fled or not; and that whether the *casus fœderis* had arisen, or whether the compact would be executed, was a political question to be decided by the President, the courts having power to direct or contravene his decisions in the first instance. Whether the judiciary had authority on habeas corpus, after the fugitive was under arrest, to prevent his extradition, if the President decided to make it, was not decided.

The prisoner then petitioned the Supreme Court of the United States for a habeas corpus. After elaborate arguments by Mr Coxe for the prisoner, and the Attorney-General (Mr Clifford) against, Mr Justice M'Lean delivered the judgment of the court. He said that the surrender of fugitives from justice was a matter of conventional arrangement between states, as no such obligation was imposed by the law of nations. Under the provisions of the constitution, the treaty was the supreme law of the land; and, in regard to the rights and responsibilities growing out of it, might become the subject of judicial cognisance. The executive had, therefore, acted rightly in referring the matter to the judicial power. The district judge at chambers exercised a special authority, and the law had made no provision for the revision of his judgment. The Supreme Court,

in issuing the writs asked for, would exercise an original jurisdiction; and that Congress had not given, if, indeed, it had the power to give it. The writs were, therefore, refused.*

This decision is obviously quite technical; but it is possible that some of the doubts expressed in the case may have led to the passing, in the following year, of the Act which has since regulated all proceedings in the United States under any extradition treaty. "The Act was passed," says Mr Justice Catron,† "not to give effect to the treaty, but to remove obscurities." The title of the Act is, therefore, clearly a mistake. It is the Act of 12th August 1848, and is entitled, "An Act for giving effect to certain treaty stipulations between this and foreign governments for the apprehension and delivering up of certain offenders." Its provisions are sufficiently important to be given at length :—

"Be it enacted, by the Senate and House of Representatives of America, in Congress assembled :—

"Sec. 1. That in all cases in which there now exists, or hereafter may exist, any treaty or convention for extradition between the government of the United States and any foreign government, it shall and may be lawful for any of the magistrates of the Supreme Court, or judges of the District Courts of the United States, and the judges of the several State Courts, and the commissioners authorised to do, by any of the courts of the United States, are hereby severally vested with power, jurisdiction, and authority, upon complaint made under oath or affirmation, charging any person found within the limits of any state, district, or

* 5 Howard, 176. 5 New York Legal Observer, 83. Wharton's State Trials, 457, *n*. See *Ex parte* Milburn, 9 Peters, 704.

† In Judgment in Kaine's case, 14 Howard, 109.

territory, who, having committed within the jurisdiction of any such foreign government, any of the crimes enumerated or provided for by any such treaty or convention, to issue his warrant for the apprehension of the person so charged, that he may be brought before such judge or commissioner, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient by him to sustain the charge under the provisions of the proper treaty or convention, it shall be his duty to certify the same, together with a copy of all the testimony taken before him, to the Secretary of State, that a warrant may issue upon the requisition of the proper authorities of such foreign government for the surrender of such person, according to the stipulations of the said treaty or convention; and it shall be the duty of the said judge or commissioner to issue his warrant for the commitment of the person so charged to the proper gaol, there to remain until such surrender shall be made.

"Sec. 2. And be it further enacted, That it shall be lawful for the Secretary of State, under his hand and seal of office, to order the person so committed to be delivered to such person or persons as shall be authorised, in the name and on behalf of such foreign government, to be tried for the crime of which such person shall be so accused, and such person shall be delivered up accordingly; and it shall be lawful for the person or persons authorised as aforesaid to hold such person in custody, and to take him or her to the territories of such foreign government, pursuant to such treaty: and if the person so accused shall escape out of any custody to which he or she shall be committed, or to which he or she shall be delivered as aforesaid, it shall be lawful to retake such person in the

same manner as any person accused of any crime against the laws in force in that part of the United States to which he or she shall so escape may be retaken on an escape.

"Sect. 4. And be it further enacted, That when any person who shall have been committed under this Act, or any such treaty as aforesaid, to remain until delivered up in pursuance of a requisition as aforesaid, shall not be delivered up pursuant thereto, and conveyed out of the United States within two calendar months after such commitment, over and above the time actually required to convey from the gaol to which he or she shall have been committed, by the readiest way out of the United States, it shall, in every such case, be lawful for any judge of the United States, or of any state, upon application made by or on behalf of the person so committed, and upon proof made to him that reasonable notice of the intention to make such application has been given to the Secretary of State, to order the person so committed to be discharged out of custody, unless sufficient cause shall be shown to such judge why such discharge ought not to be ordered.

"Sect. 5. And be it further enacted, That this Act shall continue in force during the existence of any treaty of extradition with any foreign government, and no longer.

"Sect. 6. And be it further enacted, That it shall be lawful for the courts of the United States, or any of them, to authorise any person or persons to act as a commissioner or commissioners under the provisions of this Act, and the doings of such person or persons, so authorised in pursuance of any of the provisions aforesaid, shall be good and available to all intents and purposes whatever," (30 Congress, Sess. 1, ch. 167.)

The principal case which has been decided under

the treaty with Great Britain was that of Thomas Kaine in 1852. Kaine was an Irishman, and was charged with an attempt to commit murder in Ireland. As the first proceeding under the act of 1848 this case deserves careful note. In June 1852 Anthony Barclay, the English consul at New York, addressed a requisition and complaint to Judge Betts, stating that it had been represented to Mr Barclay, and was believed by him, that Kaine did in Ireland, on or about the 5th April 1857, fire a pistol at one James Balfe with intent to murder him; that a warrant to apprehend him was issued by a magistrate of the peace, but that the said Kaine had absconded and fled to the United States. The requisition further stated that the crime of which he had been guilty would have justified his apprehension and commitment for trial if it had been committed in the United States. It then asked that a warrant for his apprehension might be issued, to the end that the evidence of his criminality might be heard and considered; and if on such hearing the evidence should be deemed sufficient, that it should be certified to the proper executive authority, in order that a warrant might issue for his surrender under the treaty between the United States and Great Britain. A warrant was accordingly issued, under which Kaine was brought before Joseph Bridgham, a commissioner of the United States at New York. No witness as to the fact was called, but a policeman produced copies of the warrant of the Irish magistrate, and the deposition on which it was granted, and proved their correctness, and he also proved the identity of the prisoner; on this evidence Kaine was committed. A habeas corpus was then obtained returnable before the Circuit Court of the United States; but Judge Betts, after hearing arguments, remanded the prisoner into cus-

tody. Upon this the Secretary of State issued his warrant directing the marshal to deliver Kaine up to the British consul, but another habeas corpus was obtained from Judge Nelson, and the case was heard by the Supreme Court. Of the judges who took part in the decision, one (Mr Justice Curtis) held that the Supreme Court had no jurisdiction in the matter; four (Catron, M'Lean, Wayne, and Grier) refused the application for release upon the merits; and the other three (Chief-Justice Taney, and Justices Nelson and Daniel) held that it should be granted. Their reasons were that the commissioner, not being specially appointed for the purposes of the Act, had no jurisdiction; that no judge or commissioner could act on the complaint of a private person; and that, there being no proof of the authority of the Irish magistrate, no competent evidence had been produced. The majority of the court, however, holding these reasons insufficient, the prisoner was remanded and delivered up.* No case of importance has occurred in the United States since 1852, unless we except that of Franz Müller, who was demanded by Great Britain on a charge of murder. It will be remembered that the police-officer who was in pursuit reached America first, and arrested the fugitive immediately he arrived. Being brought before Commissioner Newton at New York, Müller asked for time to produce witnesses from England to prove an *alibi*, the defence afterwards unsuccessfully set up at the Central Criminal Court. The commissioner refused the request on the ground that it was not his province to determine the question of fact. The evidence before him showed probable cause for believing Müller to have committed the crime, and that was the only question he had to try.

* 14 Howard, 103; 1 Robinson's Prac., 10; 1 Phillimore, Comm. 430.

The operation of extradition treaties being found to be impaired by the requirements of the American law with regard to evidence, an Act was passed on the 22d June 1860, similar to that which has recently been passed in England.* It provides, "That in all cases where any depositions, warrants, or other papers, or copies thereof, shall be offered in evidence upon the hearing of an extradition case under the second section of the Act, entitled, 'An Act for giving effect to certain treaty stipulations between this and foreign governments for the apprehension and delivering up of certain offenders,' approved August 12, 1848, such depositions, warrants, or other papers, or copies thereof, shall be admitted and received for the purposes mentioned in the said section, if they shall be properly and legally authenticated, so as to entitle them to be received for similar purposes by the tribunals of the foreign country from which the accused party shall have escaped; and the certificate of the principal diplomatic or consular officer of the United States, resident in such foreign country, shall be proof that any paper or other document so offered is authenticated in the manner required by this Act," (36 Cong., Sess. 1, ch. 184.)

Since the conclusion of the treaties with Great Britain and France, the United States have entered into eleven other agreements of a similar nature. In 1845, a treaty with Prussia was negotiated by Mr Wheaton, but it was rejected by the senate in consequence of the requirement of Prussia that neither power should be required to give up its own subjects. America has never desired to make, or been willing to admit, this reservation,—which, however, is insisted upon by the majority of European states. It was felt that

* 29 & 30 Vict., c. 121. See *post*, p. 86, and Appendix, p. 157.

as the United States did not try its citizens for crimes committed abroad, and the other parties to the treaty did, this proviso would produce a want of reciprocity, and that difficulties would probably arise, specially likely in, and important to, the United States, with regard to the case of naturalised subjects. The objection was, however, waived, and a treaty was made in 1852 between the United States and Prussia, acting for herself, and also on behalf of Saxony, Electoral Hesse, Ducal Hesse, Saxe-Weimar, Eisenach, Saxe-Meiningen, Saxe-Altenburg, Saxe-Coburg Gotha, Brunswick, and several of the other petty German states. This treaty recites, "That whereas the laws and constitution of Prussia, and of the other German states, parties to this convention, forbid them to surrender their own citizens to a foreign jurisdiction, the government of the United States, with a view of making the convention strictly reciprocal, shall be held equally free from any obligation to surrender citizens of the United States;" and its provisions include the crimes of murder, assault with intent to commit murder, piracy, arson, robbery, forgery, the utterance of forged papers, the fabrication or circulation of counterfeit money, whether coin or paper money, and the embezzlement of public money. Of the other ten treaties, six—those with Bavaria, (1853,) Hanover, (1855,) the Two Sicilies, (1856,) Austria, (1856,) Baden, (1857,) and Sweden and Norway, (1860,)—contain the exception as to extradition of citizens or subjects; four, those with the Hawaiian Islands, (1849,) the Swiss Confederation, (1850,) Venezuela, (1861,) and Mexico, (1861,) omit it. All contain provision as to the evidence required similar to that in the treaties with Great Britain and France.*

A remarkable case of extradition, independently

* Wheaton, 6th edit., (Lawrence,) 180; 8th edit., (Dana,) 190.

of any treaty, occurred in the United States in 1864. One Arguelles, a Spaniard, being governor of a district in Cuba, in which a cargo of Africans had been landed from a slave ship and set free by the authorities, reported to the government that one hundred and forty-one of them had died of the small-pox; but it was discovered that he had sold them into slavery, with the aid of forged papers, and having thus obtained a large sum of money, had escaped to New York. At the request of the captain-general of Cuba and the Spanish minister, Mr Seward, with the President's sanction, ordered the arrest and delivery up of Arguelles, as a purely executive act. The senate passed a resolution, of 28th May 1864, requesting the President to inform them whether such a surrender had been made, and if so, under what authority of law or treaty it was done. The President enclosed in his reply a report from Mr Seward, and documents showing the guilt of Arguelles, and the request of the Spanish government. Mr Seward, in his report, says, "There being no treaty of extradition between the United States and Spain, or any Act of Congress directing how fugitives from justice in Spanish dominions shall be delivered up, the extradition in this case is understood by this department to have been made in virtue of the law of nations and the Constitution of the United States. Although there is a conflict of authorities concerning the expediency of exercising comity towards a foreign government, by surrendering at its request one of its own subjects charged with the commission of crime within its territory, and although it may be conceded that there is no national obligation to make such a surrender upon a demand therefor, unless it is acknowledged by treaty or by statute law, yet a nation is never bound to furnish asylum to

dangerous criminals, who are offenders against the human race; and it is believed that if in any case the comity could with propriety be practised, the one which is understood to have called forth the resolution furnished a just occasion for its exercise," (U.S. Dipl. Corr. 1864, part ii. 60–74. Cong. Globe, 1864.)

A resolution, condemning this act as a violation of the Constitution, and in derogation of the right of asylum, was defeated in the House of Representatives by a large majority, and the subject referred to a committee; but Congress took no further action in the matter. Legal proceedings were commenced against the officer who executed the Secretary's warrant on a charge of kidnapping, but these also were abandoned, and the matter has not in any way come under judicial decision.*

CHAPTER IV.

HISTORY OF THE LAW IN CANADA.

THE law of Canada, with regard to extradition, has been closely connected with that of the United States, and the Canadian provinces were before the mother country in their recognition of international duty upon this subject. In 1827, Joseph Fisher, an alien, was arrested in Lower Canada, charged with larceny in Vermont, and an order was made by the Governor of the province for his rendition to that state. A habeas corpus being awarded, Chief-Justice Reid, before whom the case was heard, after full argument and consideration,

* Wheaton, 8th edition, (Dana,) 183, *n.*

refused the discharge. In his judgment he adopted the principles laid down by Chancellor Kent in the decision in Washburn's case,* and enforced them by some weighty comments of his own. He said, "The right of surrender is founded on the principle that he who has caused an injury is bound to repair it, and he who has infringed the laws of any country is liable to the punishment inflicted by those laws. If we screen him from that punishment we become parties to his crime, we excite retaliation, we encourage criminals to take refuge among us. We do that as nations which as individuals it would be dishonourable, nay criminal, to do. If, on the contrary, we deliver up the accused to the offended nation, we only fulfil our part of the social compact, which directs that the rights of nations as well as individuals shall be respected, and a good understanding maintained between them, and this is the more requisite among neighbouring states, on account of the daily communication which must necessarily subsist between them."† This fugitive was accordingly delivered up, but the government did not accept as conclusive this well-reasoned rule. In 1833 an application was made by the Governor of New York to Lord Aylmer, then Governor of Canada, for the extradition of four men who had crossed the boundary, and barbarously murdered a young woman in the town of Champlain. Lord Aylmer refused the application, saying, in his reply, "It is not competent to the executive in the absence of any regulation by treaty, or legislative enactment on the subject, to dispense with the provision in the Habeas Corpus Act. The subject has received every consideration, and I

* See *ante*, p. 30.

† 1 Stuart, Can. Rep., 245. Quoted Robinson's Practice, i. 9.

very much regret to say the opinion of the Attorney-General is confirmed by a majority of those who have been called upon," (Letter of Lord Aylmer to General Marcy, 27th May 1833.)* However, in the same year, the province of Upper Canada remedied this defect in her laws by the passing of a short but comprehensive act upon the subject. The Act 3 William IV., c. 6, was entitled, "An Act respecting the apprehension of fugitive offenders from foreign countries, and delivering them up to justice," and its object was recited to be "for the apprehending and delivering up of felons and other malefactors, who having committed crimes in other countries seek an asylum in Upper Canada."

It enacted—

"1. In case murder, forgery, larceny, or other crimes punishable by the laws of Upper Canada with death or confinement at hard labour, be charged to have been committed within the jurisdiction of a foreign country by a person who has fled to or sought refuge in Upper Canada,—and in case a requisition for the surrender of such person be made by the government of such country, or by its ministers or officers authorised to make the same,—then upon such evidence of criminality as would warrant his apprehension and commitment for trial had the offence been committed in Upper Canada, the Governor may, in his discretion, by and with the advice of the Executive Council, deliver such person up to justice, and direct his transmission to the custody of such foreign government.

"2. For preventing the escape of any person so charged, before an order for his transmission can be obtained from the Governor, any judge or justice of the peace in Upper Canada, acting within

* See Holmes *v.* Jennison, 14 Peters, 540.

his jurisdiction, upon such evidence on oath as satisfies him that the person accused stands charged with some crime of the description herein before specified, or that there is good ground to suspect him to have been guilty thereof, may issue his warrant for the apprehension and commitment of such person, in order that he may be detained in secure custody until application can be made to the Governor for his surrender, and until an order can be made thereon.

"3. But it shall not be incumbent upon the Governor in council to deliver up any person so charged, if for any reason he deems it inexpedient; and if any person committed under this Act be detained in custody beyond the time reasonably required for carrying the provisions hereof into effect, such person may be discharged upon habeas corpus."

This act was incorporated in the Consolidated Statutes of Upper Canada, as 22 Vict., c. 96, but was repealed by 23 Vict., c. 41, other legislation extending to the whole of Canada having rendered it unnecessary.

Only one question of difficulty seems to have arisen under this Act, and the case is not reported, but was mentioned by Lord Campbell in the House of Lords.* While, as Sir John Campbell, he was Attorney-General, (1834–1841,) a slave escaped from his master in the state of New York, and got to Canada. To facilitate his escape, he rode a horse of his master's part of the way, but turned it back on reaching the frontier. The authorities of New York, knowing the Canadian government would not give him up as a fugitive slave, took a bill of indictment before the grand jury at New York, and got a true bill returned for felony in stealing the horse, and then claimed him. The

* 60 Hansard, p. 326.

Canadian government consulted the English government, and the Attorney-General advised that the man could not be given up, as the essential ingredient of the felony, the *animus furandi*, was wanting in his act, and the true bill, where no felony had in fact been committed, did not bring the case within the law.

By virtue of the Act of 1833, the treaty between the United States and Great Britain, concluded in 1842,* had immediate operation in the province of Upper Canada; but the Act passed in the following year, to give effect to the treaty in the United Kingdom,† was found inconvenient in its application to a territory so extensive as Canada. Accordingly, under the fifth section of the Imperial Act, (6 and 7 Vict., c. 76,) a Colonial Act was passed, (12 Vict., c. 19;) and it being left to her Majesty to fix the day of its coming into operation, an order in council was made on the 28th March 1850, and proclaimed in May of the same year, by which the operation of the Imperial Act in the colony was suspended. The Canadian Act was afterwards put in the schedule of Repealed Statutes in the Consolidated Statutes (Canada) of 1859, but was re-enacted in terms in those statutes as 22 Vict., c. 89.

The preamble recited that the provision of the Imperial Act, requiring that before the arrest of a fugitive offender, a warrant should issue under the hand and seal of the person administering the government, to certify that a requisition had been made on the authority of the United States, had been found inconvenient; and the first clause of the statute enacted, that upon complaint made, any of the judges of the superior courts in the province, or any of her Majesty's justices of the peace in the same, might issue a warrant for the

* See *ante*, p. 36. † See Appendix, p. 122.

apprehension of the person charged; and if the evidence on the hearing should "be deemed by him sufficient to sustain the charge according to the laws of the province," he should certify the same, with a copy of all the testimony, to the Governor. The other clauses were substantially the same as those of the Imperial Act; but a few alterations were made, which were removed by a later statute. By the 24 Vict., c. 6, (Canada,*) the first three sections of the 22 Vict., c. 89, were repealed, and others substituted for them. In the first of the repealed sections jurisdiction had been given to the justices of the superior courts of the province, and to the justices of the peace. In the new provision the latter were omitted, and jurisdiction was given to "any judge of any of her Majesty's superior courts of the province, or any judge of a county court in Upper Canada, or any recorder of a city in the province, or any police magistrate or stipendiary magistrate in this province, or any inspector and superintendent of police empowered to act as a justice of the peace in Lower Canada." The former statute had authorised the delivery to the United States, "or any of such states," for crimes committed "within the jurisdiction of the United States or any of such states." In the amended clauses, the words, "or any of such states," were everywhere struck out. Two other alterations were made in the rules of procedure, in order to bring the law into harmony with that of the United Kingdom. The evidence produced before the magistrate was not to be "sufficient to sustain the charge according to the laws of this province," but "such as, according to the laws of this province, would justify the appre-

* In the argument in the St Alban's Raid case, Mr Abbott said that this statute was hastily passed, to facilitate the extradition of fugitive slaves. St Alban's Raid, 164.

hension and committal for trial of the person accused;" and in the second clause, which provided that depositions might be produced when "certified under the hand of the person or persons issuing such warrant, *or under the hand of the officer or person having the legal custody thereof*," the latter words were omitted.

For the sake of clearness, these statutes have been taken together; but in the year before the latest amendments were made, a case had arisen in Canada which caused more excitement, both there and in Great Britain, than had ever been produced by a demand of extradition. This was the case of Anderson.* In September 1853, John Anderson, a negro slave, born in the United States, ran away from his master. About three weeks later, he met and spoke to a planter named Diggs, who recognised him. Anderson asked Diggs where Charles Givens lived, saying he belonged to M'Donald, and wanted Givens to buy him that he might be near his wife. Diggs charged him with being a runaway slave, and refused to let him go. The law of Missouri declares that any slave found more than twenty miles from his home shall be deemed a runaway, and that any person may apprehend a negro being, or suspected of being, a runaway; and it provides a reward for so doing. Diggs, however, told Anderson to come and get his dinner, and he would then go with him to Givens. On the way, Anderson tried to make his escape, and Diggs then called to four negroes who were with him to give chase, saying they should have the reward. Anderson, being overtaken, drew a knife, threatening to kill any one who touched him. The negroes kept off, but Diggs struck at him with a stick, which caught in a bush and broke, and then Anderson stabbed him in the breast. Diggs, turning

* Ann. Reg. (1861,) 520.

to flee, caught his foot in a tree and fell, and Anderson then stabbed him in the back, and after being chased a short distance by the negroes, succeeded in making his escape to Canada. Diggs shortly after died of his wounds. Anderson lived unmolested in Canada until 1860, when he was recognised, and was arrested on the application of the officers of the state of Missouri. He was brought before a justice of the peace at Brantford on a charge of murder, (under 22 Vict., c. 89,) and the evidence being held sufficient, he was committed to prison, and an application for his extradition was made by General Cass, the United States' Secretary of State. A habeas corpus was applied for on behalf of Anderson, and the question was argued before the Canadian Court of Queen's Bench. Chief-Justice Robinson had some doubt whether the court could interfere at all when the justice had made the required certificate. In his view of the case, however, this question was unimportant, as, upon the merits, he thought the commitment was right. The words of the statute being, "if, on such hearing, the evidence be deemed by him sufficient to sustain the charge according to the laws of this province," the Chief-Justice held that the provision, "according to the laws of this province," referred only to the means and amount of proof, and not to the definition of the offence. By the municipal law of Missouri, Diggs was authorised to arrest Anderson; and by the law of England, the killing of a man legally authorised to arrest the prisoner was murder. Circumstances of justification were for a jury, whose office the justice at Brantford had no right to assume. The fact that, if acquitted, he would be returned to slavery, was not material.* That was a question for the framers of the treaty.

* See opinion of Sir F. Pollock, Att.-Gen., 71 Hansard, 56.

Justice Burns agreed with the Chief-Justice.

Justice M'Lean dissented, and held the commitment bad on three grounds:—

1. The charge was, "did wilfully, maliciously, and feloniously stab and kill," which was not an express charge of murder.

2. The warrant of committal commanded the gaoler to keep the prisoner "until he shall be delivered by due course of law." This was a bad commitment, for the only way in which he could be so delivered was by an order of discharge from that court.*

3. The words, "according to the law of this province," applied to the nature of the crime, not merely to the quantity of evidence; and as the law of Canada did not recognise slavery, Anderson could not be held to have committed murder in resisting an unlawful detention.

In accordance with the opinion of the majority of the court, the prisoner was remanded; but notice was given of an appeal to the Court of Error and Appeal in Upper Canada. By this time the case had created much excitement in England, and the Secretary for the Colonies addressed a despatch to the Governor of Canada, instructing him not to issue his warrant for the extradition of Anderson, even if the judgment of the Queen's Bench were upheld on appeal. Her Majesty's government, he said, were not satisfied that the decision of the court at Toronto was in conformity with the views of the treaty which had hitherto guided the authorities in this country; and they desired an opportunity of further considering the question, and, if possible, of conferring with the government of the United States upon the subject.

Meanwhile a habeas corpus was moved for in the Queen's Bench at Westminster upon the affi-

* See case of Jacques Besset, 14 L. J. M. C., 17; *post*, p. 72.

davit (a singularly meagre one) of M. Chamerovzov, the Secretary of the British and Foreign Anti-Slavery Society. The question was argued on behalf of the prisoner by Edwin James, Q.C., Flood, and Gordon Allan, before Chief-Justice Cockburn, and Justices Crompton, Hill, and Blackburn.

The question was whether the Crown, by concurring in the establishment of a separate judicature for Canada, had vested in the courts of that country the exclusive right of issuing a habeas, and the court unanimously held that as the legislature, in establishing that local judicature, had not expressly abrogated the jurisdiction in this matter possessed by the courts at Westminster, they were, while sensible of the inconvenience which might result from such a course, bound by the precedents quoted to grant the writ.*

It was not however needed. Before it arrived in Canada, the case had been brought by habeas corpus before the Canadian Court of Common Pleas, and that court had, chiefly on technical grounds, overruled the judgment of the Queen's Bench and discharged the prisoner.†

The most important question in the case thus remained without final decision beyond that of the Canadian Queen's Bench. It has, however, been raised in other cases, which will be considered, and the matter discussed in a later chapter of this book.‡ Two cases of importance have since arisen in Canada.§ They were almost contemporaneous,

* 30 L. J. Q. B., 129; 9 W. R., 225; 7 Jur. N. S. 122; 3 L. T. N.S.,622. In consequence of this decision, the Act 25 Vict., c. 20, was passed, which provides that no writ of habeas corpus shall issue of any court in England to any colony or foreign dominion of the Crown in which any court exists, having power to issue and insure the due execution of such writ.

† 10 Canadian C. P., 60.

‡ See *post*, p. 101.

§ St Alban's Raid, p. 301.

and arose out of very similar circumstances, and involved the same question of law. Slightly the first in order of time was the case of Burley, who was demanded by the United States on a charge of robbery committed on board the steamer *Philo Parsons*, on Lake Erie. Being brought before the Recorder of Toronto he pleaded in justification, that he was a commissioned officer in the service of the Confederate States, that he was entitled to be regarded as a belligerent, and that his object in taking forcible possession of the *Philo Parsons*, of which act the robbery with which he was charged was part, was to use her as a means to enable his party to effect the release of the Southern prisoners confined on Johnson's Island. The Recorder held that the act was not justified, and committed him to prison. An application for a habeas corpus was thereupon made in the Court of Queen's Bench, before Chief-Justice Draper, (Q.B.,) who had requested Chief-Justice Richards, (C.P.) and Justices Hagarty and Wilson to sit with him. These judges unanimously refused the writ, saying that the circumstances of the case were so suspicious, that if it had been a case within their own territory, the magistrate would not have been justified in discharging the prisoner. Burley had no commission, but his acts were avowed and assumed in a manifesto by President Davis.

Justice Wilson on this point said, "There is an obvious distinction between an order to do a belligerent act, and the recognition and avowal of such act after it has been done. The one is an act of war, the other an act of established government. The one is consistent with what Great Britain acknowledges, the other is not. For us judicially to give effect to the avowal and adoption of these acts would be to recognise the existence of the nationality of the Confederate States, which

at present our government refuses to acknowledge." The distinction thus drawn, which has wider and better reasons to support it than can be gathered from the technical manner in which Judge Wilson expressed it, was discussed and illustrated in the other and more valuable case, that of the St Alban's raiders.* On the 19th October 1864, Bennett H. Young, with twenty armed followers, entered St Alban's in Vermont. Declaring themselves Confederate soldiers, they seized the banks, and took possession of the bank-notes and securities they contained. They secured a number of the citizens, and kept them under a guard in a public square. While they were in possession of the St Alban's bank, a man named Breck entered to pay a note. He was immediately seized, and his money was taken from him by two of the raiders. A skirmish ensued, the raiders failed in an attempt to fire the town, and made their escape; but on reaching Canada, fifteen of them were arrested without warrants, and without any sworn informations having been taken. One of the prisoners, William H. Hutchinson, was brought before the Recorder of Montreal on a charge of stealing the moneys of the St Alban's bank and assaulting one of the clerks, and was committed to prison. The warrant of commitment ordered the gaoler to receive "the said William H. Hutchinson and him safely keep for examination." An application was made to Mr Justice Badgley for a habeas corpus, on the ground that the committal for examination, without mentioning the day, was too general, and also that the informa-

* The account of this case is taken from a volume published in Montreal in 1865, entitled "The St Alban's Raid, A Complete and Authentic Report of all the Proceedings. With the Arguments of Counsel, and the Opinions of the Judges, Revised by themselves. Compiled by L. N. Benjamin, B.C.L."

tion on which the warrant of commitment was issued stated that the prisoner was apprehended on "suspicion of felony," and that this was not a sufficient charge. A writ of certiorari was at the same time moved for to bring up the information, which was sworn to be of the following purport—"That Guillaume Lamothe, chief of police, (by whom it was signed,) arrested the prisoner on suspicion of felony, and found on him ten thousand dollars in Franklin County bank bills, the said bank being situate at St Alban's, in the State of Vermont, one of the United States of America, and that he had reason to believe that these bills were stolen by Hutchinson, and others with whom he acted in concert." The habeas was granted returnable immediately, but another commitment was at once made out, and returned with the original one. This second commitment was by a justice of the peace for the city of Montreal, and in it both defects were remedied.

On argument before Judge Badgley, the Recorder's commitment was held too general, and was accordingly quashed, another day being appointed for hearing the application of the prisoner to be discharged from the second warrant. No further separate proceedings were however taken in this prisoner's case.

The other prisoners had meanwhile been brought before Justice Coursol, who had signed the second warrant in Hutchinson's case, and were by him remanded for further examination. They immediately petitioned the Court of Queen's Bench for a habeas, on the grounds (1) that the magistrate had no power to remand in cases under the extradition Acts, and (2) that the remand appointed no day for the further examination, and therefore was too general, the statutes giving magistrates power to remand having limited the time to eight days.

It appeared, however, that the eight days had not yet expired. The application was peremptorily refused, the judges holding that the power to remand was essential to a magistrate's performance of his duties, and that the irregularity of not fixing the day was unimportant. They expressed doubts whether they had any jurisdiction until after final commitment.

The examination was then proceeded with by Judge Coursol.

The evidence for the prosecution being closed, the counsel for the prisoners applied for a delay of thirty days to enable them to obtain evidence for the defence.

The petition of the prisoners stated that they desired to prove and could prove that the acts charged against them were done by them as soldiers of the Confederate government, and were duly authorised and directed by the military authorities of the Confederate States, acting under the government thereof, and were acts of warfare committed and performed in conformity with the rules and precedents by which civilised warfare is conducted. The application was opposed on the part of the Crown, and also of the United States, on the ground that it was not the province of the magistrate to receive exculpatory evidence in cases under the extradition treaty, as he would be thereby virtually assuming the jurisdiction of the American courts to try the accused.

Judge Coursol said, "I totally differ from that view, and for this obvious reason, that the Act, to give effect to the treaty, requires that I should be perfectly satisfied of the criminality of the act of the accused according to our own law. The affidavit shows that the accused propose to prove that anything they may have done was an act of legitimate warfare, and as international law is a part

of the common law of this country, affecting the character of homicide and other felonies when committed under special circumstances, I cannot be prepared to give my opinion upon the evidence of criminality until I have the whole case before me." He added, that in the *Chesapeake,* and other cases, witnesses for the defence were examined without objection. The delay was therefore granted, a promise being given in writing by the prisoners that they would not make any application for release until the month had expired. On the 13th December the inquiry was renewed, and the counsel for the prisoners then made an objection to the jurisdiction of the court. They contended, that in consequence of the alterations made by the 24 Vict., c. 6, in the provisions of the 22 Vict., c. 89, the operation of the Imperial Act 6 and 7 Vict., c. 76, had revived, and that Act requiring a warrant to be issued by the Governor-General in the first instance, which had not been done in this case, the court had no jurisdiction to arrest or detain the prisoners.* Judge Coursol held the objection valid, and at once discharged them.

Immediately after this discharge, Mr Justice Smith issued a warrant similar to those under which they had been previously in custody, and five of the raiders were re-arrested near Quebec on the 20th December, and brought before him for examination.

At the close of the case for the prosecution the objection which had before succeeded was again raised, but in an elaborate judgment Mr Justice Smith overruled it, and held that he had jurisdiction.

It was then objected that the crime charged was not within the treaty, that it was an offence against the state of Vermont, and as the state

* See *ante*, p. 54.

jurisdiction of Vermont was separate from, and independent of, the jurisdiction of the United States, it was not covered by the 24 Vict., c. 6, § 1, which only spoke of offences committed "within the jurisdiction of the United States." It was contended that this distinction was recognised by the 22 Vict., c. 89, which spoke of the jurisdiction of the United States, "or of any of such states," and that these words being omitted in the later statute, it intentionally restricted the operation of the treaty to crimes committed solely within the jurisdiction of the United States. Judge Smith held that "jurisdiction" and "territory" were convertible terms when used in the sense of the treaty power. In the treaty and in the law the word "jurisdiction" must mean territorial jurisdiction. The words relied upon were improperly introduced into the earlier Act, and properly rejected from the later one, the law now standing as if they had never been used at all. Upon this decision being pronounced (7th January 1865) an application was made by the prisoners for another delay of thirty days. Their counsel (Mr Abbott, Q.C.) thus laid down the principle on which he applied—"If it be really a case of conflicting evidence, the fact of the crime being committed being proved, that is no case for a magistrate to try; it is not within his jurisdiction to do so. (*Judge Smith.*—Clearly not; it is none of my business.) But if, on the other hand, the prisoners propose to show that the act committed does not constitute a crime for which extradition could be demanded, that is a question which the judge must investigate and decide. In doing this he does not try the robbery, but the application of the treaty."

Mr Abbott stated that a delay for a similar purpose had been granted in Burley's case, (for

thirty days,) and in another case by Judge Short at Sherbrook.

In spite of the strong opposition of the counsel for the United States, the delay was granted.

On the 10th of February an application for further delay was made on affidavit that the solicitor for the defence had been refused permission to pass the lines to obtain the necessary papers from Richmond, and that Lieutenant Davis, of the Confederate army, who had entered the Federal lines to receive despatches to take to Richmond for this purpose, had been captured and sentenced to death as a spy.

Judge Smith refused further delay. To grant it would, he said, be to decide that the case could not be proceeded with until the war was ended. Witnesses were then called for the defence, chiefly to prove the authenticity of the following documents which were produced. Young's commission as a lieutenant in the Confederate service; his instructions to form a corps of twenty escaped prisoners for special service; the order for the raid signed by Mr C. C. Clay; the muster rolls of the companies to which the prisoners belonged.

Upon this evidence, after long argument on both sides, Judge Smith, in a very elaborate judgment, discharged the prisoners. He held "that the attack on St Alban's was a hostile expedition, authorised both expressly and impliedly by the Confederate States, and carried out by a commissioned officer of their army in command of a party of their soldiers. And therefore that no act committed in the course of, or as incident to, that attack can be made the ground of extradition under the Ashburton treaty."

The counsel engaged throughout this case were Mr Abbott, Q.C., Mr Laflamme, and Mr Kerr, for the prisoners; Mr Johnson, Q.C., for the crown;

and Messrs Devlin and Ritchie for the United States.*

CHAPTER V.

HISTORY OF THE LAW IN ENGLAND.

THE history of the subject in England begins with the treaties made with the United States in October 1842, and with France in 1843. There had been one or two dicta, not decisions, in the English courts, and so far as these went they recognised the duty of the extradition of fugitive criminals, but their authority was very slight, and it was clear that the right to habeas corpus at common law or by statute would, in the absence of treaties or special Acts of Parliament, prevent any proceedings for the rendition of such offenders.

The provision for mutual extradition between the states signing the treaty of Amiens in 1802, contained in that treaty, had never come into operation in consequence of the speedy renewal of the war.

And the French Minister of Justice was exactly correct in the statement in his circular of the 5th April 1841, that extradition could not be obtained from Great Britain, because her legislation did not allow it.

Only one demand seems to have been made upon Great Britain before the date of these treaties, and that was by the United States in 1841, in the case of the *Creole*. This case has scarcely received sufficient notice; apart from the question of the necessity of legislative provisions, it is useful in

* For the recent case of Lamirande, see Appendix, p. 158.

illustrating the cases of Anderson in Canada, and Tivnan in England.*

On the 27th October 1841, the brig *Creole* sailed from Hampton Roads to New Orleans with a cargo of slaves. On the 7th November the negroes rose, murdered a passenger named Hewell, the owner of some of the slaves, wounded the captain and the mate, and took the vessel into Nassau. At the request of the American consul, the Governor put a guard on board, and the matter was investigated by two magistrates.

Nineteen slaves were identified as having participated in the mutiny and murder, and they were placed in confinement, the Governor refusing to give them up to the American government. The rest were set at liberty. The nineteen were tried at Nassau for piracy and acquitted. The law authorities in England were unanimously of opinion upon this case that they could not be given up in the absence of an Act of the English Parliament giving power to the executive.†

For this reason the extradition clause of the Ashburton treaty, which has already been quoted, while it took immediate effect in America and Canada, did not come into operation in England until August 1843, when the Act 6 and 7 Vict., c. 76 was passed.‡ Some objection was made to this Act in the House of Commons, where fears were expressed that advantage might be taken of the treaty to get back fugitive slaves on pretended charges of robbery. The Attorney-General (Sir F. Pollock) being appealed to on the subject, said that, upon a charge of crime being made against a fugitive, his personal status in the country from which he had fled would be wholly immaterial.

* See Anderson's case, *ante*, p. 55. Tivnan's, *post*, p. 77.
† Ann. Reg., lxxxiv. 312. Hansard, lx. 27–30, 318–327.
‡ See Appendix, p. 122.

Upon this an amendment was moved by Mr Hawes, to exclude slaves from the operation of the Act, but it was defeated by 59 to 25.*

The previous chapter, 6 and 7 Vict., c. 75,† had made provision for carrying into effect the treaty with France, which had been signed at London on the 13th February 1843. The Acts were very similar, differing chiefly in the enumeration of the crimes for which extradition should be accorded to the respective countries.

To France, criminals might be delivered if they were accused of "murder, (comprehending the crimes designated in the French penal code by the terms assassination, parricide, infanticide, and poisoning,) or of an attempt to commit murder, or forgery, or of fraudulent bankruptcy;" to the United States, if they were charged with "murder, or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged paper."

In both Acts it was provided that, upon requisition duly made, it should be lawful for the Secretary of State to issue his warrant signifying that such requisition had been made, and requiring all justices of the peace and other magistrates and officers of justice, to govern themselves accordingly. Thereupon it should be lawful for any such justice of the peace to examine, upon oath, any person or persons touching the truth of the charge, and upon such evidence as, according to the laws of that part of her Majesty's dominions, would justify the apprehension and committal for trial of the person so accused, if the crime of which he or she should be so accused had been there committed, to issue his warrant for the apprehension of such person, and also to commit the person so accused to jail, there to remain

* Hansard, lxxi. 566. † See Appendix, p. 118.

until delivered pursuant to the requisition. In every case, "copies of the depositions upon which the original warrant was granted, certified under the hand of the person or persons issuing such warrant, and attested upon the oath of the party producing them, to be true copies of the original depositions," might be received in evidence of criminality.

It was provided in the Act relating to France, that no justice of the peace or other person should issue his warrant for the apprehension of any such supposed offender, until it should have been proved to him, upon oath or by affidavit, that the party applying for such warrant was the bearer of a warrant of arrest, or other equivalent judicial document, issued by a judge or competent magistrate in France, authenticated in such manner as would justify the arrest of the supposed offender in France upon the same charge, or unless it should appear to him that the acts charged against the supposed offender were clearly set forth in such warrant of arrest, or other equivalent judicial document.

No provision similar to this was inserted in the Act relating to America.

In both Acts it was provided, that any person committed under them might be discharged if he were not delivered up within two months. By the 8 and 9 Vict., c. 120,* the powers of these Acts were extended to the police magistrate of the metropolis; and it was provided that their warrants (forms of which were given in a schedule) might be executed in any part of England.

Attempts were almost immediately made to put these Acts in force. The first case was that of J. C. Clinton, who was claimed by the Ameri-

* See Appendix, p. 126.

can government on a charge of forgery, committed in the United States several years before. The magistrate before whom he was brought thought fit to discharge him, on the ground that the *original* depositions had been produced, whereas the statute only applied to *copies*.* He was, however, again arrested and committed, and a habeas corpus was then obtained from Mr Baron Platt. On its return, Mr Knowles, Q.C., and Mr Clarkson for the prisoner, contended that the Act 6 and 7 Vict., c. 76, could not have a retroactive effect. It could not have such effect in America, (United States Const., Art. 3, § 9,) and the contracting parties and the British Parliament must be held to have intended perfect reciprocity. Besides, as a criminal act, it must be construed strictly. Sir John Bayley, for the prosecution, relied on the fact that the Act, with regard to France, (6 and 7 Vict., c. 75,) expressly excluded all offences committed antecedently to the date of the treaty, while that relating to America did not. To give the Act retrospective effect would not be to make an *ex post facto* law, as it created no new offence, assigned no new punishment, and did not alter the nature of the evidence required.

Mr Baron Platt, after short consideration, having no doubt upon the matter, declined to leave it for argument before the full court, and discharged the prisoner. He said that there was much weight in the argument with regard to reciprocity, and, explaining the words of the Act by reference to the terms of the treaty, he was bound to hold that the word "committed" meant "committed after the date of the treaty."†

The next case was that of Jacques Besset, who was claimed by the French government on a charge of fraudulent bankruptcy, and being

* Egan on Extradition, 48. † *Law Times*, Nov. 1, 1845.

brought before Alderman Magnay, (then Lord Mayor,) was by him committed, 23d September 1844.

A writ of habeas corpus was granted by Mr Justice Wightman at chambers, but stood over until term by consent. It was then argued in the Queen's Bench before Lord Denman, C.J., and Williams, Coleridge, and Wightman, Js., by Mr Montagu Chambers for the prisoner, and Mr Edwin James against the discharge. Sir F. Thesiger, Att.-Gen., and Mr Gurney watched the case for the Lord Mayor. Several objections were taken to the commitment, the chief being, that its conclusion, "until he shall be discharged by due course of law," was bad, (Mash's case, 2 W. Bl., 805.) Lord Denman, delivering judgment, said, "I regret that on the first application which has come before us under this statute, the warrant is so defective that we cannot allow the Act to take effect. Neither we nor the gaoler have any power but such as the statute gives; and its provisions have not been rightly pursued. We are asked to remand the prisoner on our own authority, as charged with a crime: but we know nothing of the crime, unless as it is brought before us by the warrant; or, I should rather say, we have no authority of the kind in such a case. If we could act in the manner suggested, the statute would have been unnecessary. The prisoner must be discharged.

The other judges concurred.

Lord Denman—"It is proper that it should be understood that this application is at common law. The statute 31 Car. II., c. 2, is not necessary to the right of making it.*

The same result as had occurred in the cases of Clinton and Besset attended almost all the efforts made to put the law in force. Between 1843 and

* 6 Q.B., 486.

1852 France claimed fourteen fugitives. In only one case was the extradition obtained, and that was through the person being apprehended in the Island of Jersey. This caused a not unnatural dissatisfaction on the part of the French government, who from time to time made representations to England upon the subject. In 1846, in answer to one of these representations, Lord Aberdeen informed Count St Aulaire that the note of the French ambassador had been referred to the home department and to the law officers of the government, and that these authorities were of opinion, in which Lord Aberdeen entirely concurred, that to obviate the difficulty complained of by the French government, a new Convention and a new Act of Parliament were necessary; and that in such new Convention the clause requiring that French subjects should not be delivered up unless the evidence of their guilt was such as to warrant their commitment for trial by the law of the country in which they had taken refuge, ought to be altogether omitted, as being contrary to the real intentions of the contracting powers and productive of many causes of insuperable difficulty in carrying out the objects of the Convention. Notwithstanding this expression of opinion, nothing more was done in the matter until May 1852, when the government of Lord Derby concluded a Convention with France,* and introduced into the House of Lords a bill to give effect to it in England. This Convention largely increased the list of crimes for which extradition might be granted; the complete list being "murder and attempts to murder; the procuring abortion; rape; manslaughter; sending threatening letters; bigamy; child-stealing; perjury; subornation of perjury; coining or uttering counterfeit coin; counterfeiting the great seal,

* See Appendix, p. 130.

or using the counterfeit seal; counterfeiting or falsifying of public securities and bank-notes authorised by law; using such counterfeit securities and notes; counterfeiting the puncheons used for marking articles of gold and silver, and using the counterfeit puncheons; counterfeiting the public stamps, and using the counterfeit stamps; feloniously forging, and uttering forged instruments; arson; robbery; burglary; stealing in a church or chapel; housebreaking; larceny, or embezzlement by clerks or servants; embezzlement by public officers; fraudulent bankruptcy, and complicity in fraudulent bankruptcy, (only in those cases which in the United Kingdom are considered as felony, and punishable by the penalty of transportation;) destroying a ship or other merchant vessel; and piracy." In a series of twenty carefully drawn clauses these crimes were described by the names appropriate to them in the French penal code, in the law of the United Kingdom, and, where necessary, in that of Scotland. And it was agreed that to every demand in extradition the article of the law under which the charge was made should be annexed, and that the demand should only be made by the French government in those cases in which the acts charged should in France be considered as *crimes*, and be punishable with severe and degrading punishments, (*peines afflictives et infamantes*,) and by the English government when the said acts should be considered as felonies, and be punishable with death, or transportation, or imprisonment with hard labour. The Convention applied to persons who had been convicted, as well as to those simply accused.

It was provided, that in the case of a demand by the French government the ambassador should produce either a sentence of conviction, (*arrêt de condamnation*,) or a warrant for apprehension,

(*mandat d'arrêt,*) clearly setting forth the nature of the crime with which the fugitive should be charged, and that the Home Secretary, having verified the authenticity of these documents, and ascertained that the crime therein specified was within the Convention, should issue his warrant to a magistrate notifying him of these facts. Thereupon the magistrate should issue his warrant of arrest, and, being satisfied when the accused was brought before him of his identity, should order him to be conveyed to the frontier to be there delivered to the agent of the French government.

In the now existing Convention, that of 1843, no exception was made of persons charged with political offences. That omission was remedied in the Convention of 1852, the seventh article of which provided, "no accused or convicted person who may be surrendered, shall, in any case, be proceeded against or punished on account of any political offence committed prior to his being surrendered, nor for any crime or offence not described in the present Convention, which he may have committed previously to his being surrendered; and proof of his having been so surrendered under this Convention shall be a good and valid defence against any proceeding on account of any political offence previously committed, and shall entitle the party to an immediate acquittal." In introducing into the House of Lords the bill to give effect to this Convention, Lord Malmesbury, the Foreign Secretary, who had negotiated it, said that he was authorised by the French ambassador to declare that any article which the wisdom of Parliament or the ingenuity of our legal profession could invent or draw up, that would perfectly secure political offenders from being surrendered, and prevent any use of the Convention that might fall on such offenders, he was authorised to state the French

government would be willing to accept. This declaration put an end to any serious opposition on this point, but grave question was raised as to the wisdom of abolishing the rule which required evidence of the fugitive's guilt to be produced before the magistrate. The discussion being adjourned, Lord Malmesbury on a later evening proposed certain amendments, the principal of which was that the Secretary of State should not issue his warrant until documentary proof of the accusation was produced, certified under the hand of the *Juge d'Instruction*. The introduction of any amendment, however, caused a serious difficulty, as it would necessitate a supplementary Convention. And attention was called in the House of Lords to the fact, that a law had recently been revived in France which provided for the trial of foreigners before French tribunals for crimes committed out of France. The law was not a new one, and it was similar to the provisions of several European codes; but a strong feeling was expressed in the House of Lords upon the subject, and the discovery, united with the other and more practical difficulties, caused the abandonment of the bill. The Convention has therefore never come into operation.* It would in many respects have been an improvement upon the former treaty. "It was," says Sir George Cornewall Lewis, "drawn with care and ability, and by it the obstacles which have rendered the treaty of 1843 inoperative would have been removed."† But it would have been easy to devise a scheme which would have greatly facilitated extradition without dispensing with the requirement that *prima facie* evidence of guilt should be produced before a magistrate, a safeguard to the fugitive, which it is

* See Debates upon the Bill, Hansard, cxxii. 192, 498, 561.
† On Foreign Jurisdiction, &c., p. 40.

not likely or desirable that an English Parliament will ever consent to take away.*

For twenty years (from 1844 to 1864) no case of extradition was argued before English courts. During this time France had made various demands, (seven between 1854 and 1856, none between the latter year and 1859,) but in no case was the extradition obtained.

The United States were more successful. Between 1854 and 1859, eleven such applications were made, and in six of them the criminal was given up. These six were all cases of murder or attempt to murder; and they all occurred on the high seas, on American ships which put into Liverpool, so that the witnesses were on board, and could easily appear before the magistrate.†

But in 1864, a case of a very important character came before the Court of Queen's Bench. This was the case of Tivnan and others,‡ charged with having "on the high seas, on board a certain American ship, committed the crime of piracy, within the jurisdiction of the United States of America."

The circumstances of the case were briefly these. On 16th November 1863, the United States steamer *Joseph L. Gerrity* left Matamoras for New York with cotton. Just before she started, six persons, among whom were the prisoners, came on board as passengers, and on the following night they seized the ship, telling the captain to consider himself a Confederate prisoner. The leader of the party, a person named Hogg, who was believed by the captain to be a major in the Confederate

* See *post*, pp. 101, 107.

† Sir G. C. Lewis on Foreign Jurisdiction, &c., p. 40. For the result of applications made by England to France, see Appendix, p. 150.

‡ 5 Best and Smith, 645; 33 L. J., M. C., 201, (Tirnan;) 12 W. R., 858, (Turnan;) 10 L. T., N. S., 499, (Tivnan.)

service, said at the time of the seizure that he had proper authority for the act, but did not exhibit any papers.

A few days after the seizure the captain and some of the crew were set adrift in a small boat. The prisoners were afterwards discovered in Liverpool, and on application from the American consul there, the Secretary of State issued his warrant under the 6 and 7 Vict., c. 76. They were thereupon brought before a magistrate at Liverpool, and, the examinations having been taken, were remanded to prison, and it being understood that no further evidence would be taken,* counsel instructed on their behalf by the agents of the Confederate Government, moved in the Court of Queen's Bench for a habeas corpus. The writ was granted, and on its return Messrs Edward James, Q.C., Littler, and J. H. James, moved that the prisoners be discharged.

They contended :—

1. That the treaty of the 22d August 1842, and the stat. 6 and 7 Vict., c. 76, founded upon it, extended only to acts declared piracy by the municipal law of either of the contracting parties, and not to piracy by the law of nations, which is punishable anywhere. The words of the statute "delivering up to justice," persons "seeking an asylum," (*i.e.* a place where they cannot be punished,) showed that the words "within the jurisdiction" must be taken to mean "within the exclusive jurisdiction" of the respective States. *Re*

* "Remands were made from time to time, but there has been no final commitment. It is not in general the practice of this court to interpose before the magistrate has given his final decision, seeing that on a future hearing before him fresh evidence might be adduced. I say this, speaking with reference to the future, for I cannot help seeing that the last of these remands was made in order to ask our assistance."—Crompton, J., 5 Best and Smith, 682.

Kaine, Judgment of Nelson, J., 14 Howard, Sup. Court Cases, U.S., 137; Marshall's Speech, 5 Wheaton, Sup. Court, U.S., Appendix i.; Opinions of the Attys.-Gen., viii. 84.

2. That the warrant of a justice of the peace under this statute, to apprehend or commit a person for trial, must be founded on one from the Secretary of State, who has no power to issue his except on the view of an original warrant issued and depositions taken in America, which did not appear here. Klüber, § 66. Martens, Précis, § 101. Opinions of Attys.-Gen., vi. 485, and vii. 6. *Re* Kaine, 14 Howard, Sup. Court, U.S., 103.

3. That the warrant of the magistrate was bad for not showing that all the witnesses before him were examined upon oath.* Mash's Case, 2 W. Bl., 805. Kite and Lane's Case, 1 B. and C., 101. Nash's Case, 4 B. and A., 295.

4. That there was no evidence before the magistrate of piracy by the law of nations. The Melomane, 5 Rob. Adm., R. 41. The United States *v.* Palmer, 3 Wheaton, 610.

Messrs Lush, Q.C., Milward, and Vernon Lushington, *contrà*.

1. The term "jurisdiction" has two different significations. First, its primary, natural sense—the right to deal with particular things or persons. Second, its far more common acceptation—the territorial limits within which that authority is exercised. It is in the latter sense that the word is used in the treaty and the statute.

Either of the expressions "jurisdiction" or "territory" in the treaty would extend to all places where the laws of the country have authority, and

* "Suppose the magistrate's warrant defective in this respect, it could be cured by a fresh warrant. We would not discharge on habeas corpus for such a reason."—Blackburn, J., 5 Best and Smith, 668. See St Alban's Raid, *ante*, p. 62.

would therefore include offences committed on shipboard; since for the purposes of law, protection, and punishment, a ship is part of the territory to which she belongs. Wheaton's Int. Law, 7th edition, (Lawrence,) 208. Reg. *v.* Lopez. Dears and B., 525. Marshall's Speech, 5 Wheaton, Sup. Court, U.S., App. i.

On the second and third points they were stopped.

4. The act done was on its face piratical, and not belligerent. There was no proof that the prisoners seized the ship for the Confederate government, or even that they belonged to the Confederate States.

The second and third points all the judges held to be immaterial, and on the fourth they thought they were not entitled to say that there was no evidence of piracy upon which the magistrate might commit. At the same time they agreed that the establishment of a belligerent character would put an end to the charge.

Upon the main question the court was divided. Crompton, Blackburn, and Shee, Js., held that the prisoners were either belligerents, and therefore not triable at all, or pirates *jure gentium*, and in that case being triable anywhere they could not be delivered up under the treaty. "Jurisdiction" was held to mean "exclusive jurisdiction," and the word piracy, therefore, meant only "municipal piracy," which alone would be within that exclusive jurisdiction. Cockburn, C.-J., dissented, holding that the term "piracy," there being nothing to limit its operation, must be taken in its comprehensive sense of piracy *jure gentium*. And as this crime was cognisable by the tribunals of all countries, the word "jurisdiction" could not be taken to mean "exclusive jurisdiction." "The language," said the Chief-Justice, "is most comprehensive, and why then is it to be construed in

a limited sense? It is said, and with truth, that the primary and original mischief which the statutes of extradition meant to prevent, was that of persons committing crimes in one state, and escaping beyond the reach of the law of that state, and so enjoying impunity; and it is also contended that for that purpose alone were those statutes passed. That that was their primary and principal object there can be no doubt, but that it was the only one I entertain great doubt; for it is impossible not to see that the mischief which it is the object of all civilised states to prevent, is not limited to such cases. An offence may be cognisable, triable, and justiciable in two places, *e.g.*, a murder by a British subject in a foreign country. A British subject who commits a murder in the United States of America may be tried and punished here by our municipal law, which is made to extend to its citizens in every part of the world. But it would be highly inconvenient, except in certain exceptional cases, that he should be tried in this country for that crime, because criminals escape, not only by being beyond the reach of the law which they have offended, but in consequence of the difficulty, if not impossibility, of proof, unless the offender is brought to justice where the offence has been committed. If, therefore, I find the language of a statute large enough to comprehend both instances, it would be highly inexpedient to restrict it to one alone."

Little notice was taken by the other judges of this point, and it has not since arisen in practice, but it is clear that the case supposed by the Chief-Justice is within the rule laid down by the other judges, and that the English government would be bound under that rule to refuse the extradition of the murderer, and to insist that if tried at all he should be tried here, by proceedings which

would be at once unfair to the prisoner, and costly and difficult to the prosecution.

In the following year a case arose, the decision in which was of equal importance with that just cited, and established a very valuable principle.

The prisoner, Charles Windsor, had been the paying teller in the Mercantile Bank of New York, and as such he had the custody of all the money in the vaults of the bank. On the 28th October 1864, he asked the receiving teller to do duty for him for the next few days, and handed him the "first teller's proofs," where was the following entry:—"Vault, 207,098 dollars reserve." He never returned to the bank, and upon inspection of the vault a large deficiency was discovered, amounting in specie alone to upwards of 30,000 dollars. A warrant was then issued in New York for his apprehension upon the charge of "forgery" under the following section of the New York Forgery Act.

"Every person who, with intent to defraud, shall make any false entry, or shall falsely alter any entry made in any books of accounts kept by any monied corporation within this state, or in any book of accounts kept by any such corporation or its officers, and delivered, or intended to be delivered, to any person dealing with such corporation, by which any pecuniary obligation, claim, or credit, shall be, or shall purport to be, discharged, diminished, increased, created, or in any manner affected, shall, upon conviction, be adjudged guilty of forgery in the third degree."*

Windsor was traced to England, and the Secretary of State having issued his warrant, he was arrested, and after examination before Sir Thomas Henry at Bow Street, was committed to prison to be detained until delivered up according to the Act.

Civil proceedings had also been instituted in

* 2 Rev. Stats., New York, 673, § 35.

this country against the prisoner, and he was in custody for the purpose of compelling him to put in bail, as well as upon the criminal charge. A writ of habeas corpus was granted by Mr Justice Mellor, and the validity of the return was argued before the Court of Queen's Bench.*

Messrs M'Mahon and Edward Clarke, for the prisoner, contended that as the offence charged was forgery only by the local law of the state of New York, it did not come within the extradition treaty, which applied only to offences which were recognised under the designations employed in the treaty and the subsequent statute, as murder, piracy, forgery, &c., by the general law of both countries.

Anderson's Case, 20, Upper Canada, Q. B. Rep. 124; Wheaton, Int. Law, 236; Ortolan, Règles Internationales, 327; 1 Phillimore, Int. Law, 413.

Minor points were also raised upon the wording of the New York statute.

Messrs Hardinge, Giffard, Q.C., and Poland, *contrà*.

1. The offence was forgery by the common law of England. This point, however, was abandoned.

2. The constitution and government of the United States recognised the laws of the several States. And in *Re* Tivnan† it had been decided that the treaty applied to municipal or statutable offences.

Cockburn, C.-J., held that the terms of the treaty and statute must be held to apply to offences which in the legislation of both countries have some common element. This act had not the essential character of forgery. It was not forgery by the law of England, nor by the general law of the United States. And where one or the other

* 34 L. J. M. C., 163. 13 W. R., 655. 12 L. T. N. S., 307. 6 New Rep., 96.

† 5 Best and Smith. See *ante*, p. 77.

country, party to an extradition treaty, and *a fortiori*, where a component part of one or the other country thinks proper to make an offence not within the general law of both countries, an offence with a particular designation, that circumstance did not of itself bring the offence within the statute.

Blackburn and Shee, Js., concurred, and the prisoner, so far as he was detained upon the criminal charge, was discharged.

In November 1864, and March 1865, the French ambassador addressed communications to Earl Russell upon the subject of the failure of the French demands for extradition, the surrender having been obtained in only one case during the twenty-two years that the Convention had been in operation. No action was taken upon the subject by the English Government, and, on the 4th December 1865, the ambassador gave the six months' notice of the termination of the Convention provided for in the 4th article. The reason given was twofold—(1) that the English government declined to surrender persons who had been convicted; and (2) that the requirement of the production before a magistrate of *prima facie* evidence of the guilt of the person accused was an insuperable obstacle to the execution of the Convention in England, and differed from the general practice of the other European powers. On the 20th January 1866, Earl Cowley replied to this notification.

"Her Majesty's government," he said, "regretted that the Convention had produced so little result; its effect with regard even to the demands made by England having been unsatisfactory. The system could not, however, be altered without having recourse to Parliament, and recent experience had shown that there would be great diffi-

culty in obtaining from Parliament any further modification in regard to the requirements of law and usage of Great Britain in dealing with persons accused of crime."

The legislature had made a concession in consenting to allow copies of depositions to be received in lieu of parole evidence. And there did not appear to be any insuperable difficulty in the production of evidence of this nature before the English magistrate. This, with evidence of identity, was all that was required for the commitment of a fugitive.

Her Majesty's government, however, seeing how serious would be the evil of an abrogation of the Convention, were prepared to consider any suggestions as to the means of making it more effective.

In a conversation with M. Drouyn de Lhuys, of about the same date, Earl Cowley made some remarks on the subject of the surrender of condemned persons, "The concession," he said, "could not be made to France without a fresh Act of Parliament; and indeed it would appear to be of very little use, unless it is intended by the Imperial government to include among persons condemned those condemned *par contumace*. Criminals condemned after trial seldom find means of escaping the punishment awarded them, but condemnation *par contumace*, or without trial in the presence of the accused, is at such variance with the whole legislation of Great Britain, that it would seem hopeless to expect the sanction of Parliament to such a measure.* On the other hand, it is to be observed that persons in this position might always be proceeded against in the category of accused persons."

* No exception of persons so condemned was contained in the Convention of 1852. See *ante*, p. 74.

In the course of the correspondence which ensued, another objection was found to exist to the English practice. By the 6 and 7 Vict., c. 75, § 2, it is provided that the copies of depositions produced shall be certified to be true copies by the person producing them, and the result of this was that some person, usually a police-officer, had to inspect the French proceedings to see if the judge had made a true certificate. This was resented by the French judges as an indignity, and it was agreed that the objection might be removed by a short Act of Parliament, providing that the copies should be accepted in evidence if the signature of the judge who signed them were authenticated by the seal of the French Minister of Justice. A bill was accordingly prepared, and passed by the legislature with slight opposition.† A clause, however, was introduced, limiting its operation to one year, to insure the full discussion of the subject in the next session of Parliament. In a letter of the 21st May 1866, the French ambassador stated that it had been agreed that a new attempt should be made to put the treaty in execution, and that with this object a demand in extradition had lately been addressed to the English authorities. In the interest of this experiment, and without withdrawing its objections to the Convention, the French government consented to a prolongation of the treaty for six months.*

This proposal was accepted by the English government.

The demand referred to was for the extradition of Victor Wideman, on a charge of fraudulent bankruptcy. He was arrested and duly com-

* 29 & 30 Vict., c. 121, Appendix, p. 157.

† Correspondence respecting the Extradition Treaty with France, July 1866.

mitted; a rule for a writ of habeas corpus was, however, obtained, and the motion to make it absolute was argued before the Queen's Bench on the 12th June 1866.

Messrs M'Mahon and Edward Clarke for the prisoner.

The Convention was at an end, and with it the statute 6 and 7 Vict., c. 75. The Convention provided that it should end at the expiration of six months after notice given by either party; and that notice having been given by France on the 4th December 1865, the Convention was no longer in existence. No provision had been made for waiver of notice.

2. No proof had been given before the magistrate that the acts charged constituted fraudulent bankruptcy under the French law, or that the prisoner was a French subject, and amenable to that law.

The Solicitor-General (Sir R. P. Collier) and Mr Hannen, *contrà*.

1. The notice having been waived, the Convention remained in force.

2. There was *prima facie* evidence of acts of fraudulent bankruptcy. The court (Cockburn, C.-J., Mellor, and Blackburn, Js.) held that the notice must be a continuing notice, and that as there could be no doubt of the nature of the acts charged, the strict proof that they constituted the crime of fraudulent bankruptcy by the French law was unnecessary.*

An application upon similar points was afterwards made to the Lord Chancellor (Cranworth) with a like result.†

It only remains to add, that on the 15th April 1862 a treaty of extradition was concluded be-

* See Taylor on Evidence; §§ 1280, 1281, 1370, and *post*, p. 99.
† 12 Jurist, N. S., 536.

tween England and Denmark.* This treaty applies to persons convicted or accused of murder, (including the crimes of assassination, parricide, infanticide, and poisoning,) or attempt to commit murder, or forgery, (comprising the counterfeiting of bank notes, or public securities, or money,) or fraudulent bankruptcy. In the case of persons accused similar evidence must be produced to that required under other treaties, but in that of persons convicted the surrender is to be made upon production of a duly authenticated copy of conviction, and proof to the satisfaction of the magistrate of the identity of the person arrested. A convention upon this subject was made with Prussia in 1864,† but it has not been carried into effect by Act of Parliament.

An important case, that of Charles Dubois, (otherwise Coppin,) has been decided since these pages were printed. A full report of it will be found in the Appendix, p. 165.

CHAPTER VI.

HISTORY OF THE LAW IN FRANCE.

THE law of extradition in France differs in every respect from that of the countries already treated of. The question of the propriety of delivering up a demanded fugitive has never been discussed before a French tribunal. That is held to be a purely political question with which courts of justice have no concern. On the other hand, the questions with which the French courts have dealt have never arisen in any proceedings in England or America. All the cases which are found in the

* 25 & 26 Vict., c. 70. See Appendix, p. 151.
† Appendix, p. 162.

French reports are those of criminals, who, having been delivered up to France, have tried there to dispute the legality of their surrender, or have raised some objection to the manner of their trial.

These cases are very simple, and require no detailed analysis, but they have considerable interest as illustrating another side of the law of extradition. A convenient starting-place for this part of the history is found in a circular of the French Minister of Justice which was issued in 1841, and may be termed the text-book of the French law upon the subject.

The only question of any importance arising before this time seems to have been as to the right of the government to surrender a French subject. That this right was possessed by the kings of France until 1830 seems to be acknowledged, but it was contended later, that it was a right which existed in the persons of the kings of France, and that in the absence of positive law, the chief of the government which issued from the revolution of that year did not inherit it. Dalloz, however, maintains that it existed by virtue of the circular of the 25th October 1811, which recognised the right of the government to grant the extradition of a Frenchman, and regulated its exercise.* The question, however, is now of no importance, as by the year 1841 it had been thoroughly established that no French subject could be given up.

It is stated by several French authors, that in 1831 the French government declared that for the future it would neither grant nor demand extradition, and notified to the Swiss Confederation its renunciation of the then existing treaties, but the fact that fresh treaties were made in 1834 and 1838 makes this statement appear improbable; it is discredited by Fœlix;† and the silence of the French minister upon the matter, when he is men-

* Dalloz, Dict. Gén. Suppl., 229. † Fœlix, 2, 329.

tioning treaties which had been in existence long before 1831, seems conclusive as to the incorrectness of the statement.

In the circular of 1841 the French Minister of Justice mentioned that France had four treaties with foreign powers :—with Spain, (29th September 1765,) Switzerland, (18th July 1828,) Belgium, (29th November 1834,) and Sardinia, (23d May 1838.) He added, that even in the absence of treaties she could obtain the extradition of criminals from other countries except from Great Britain and the United States. He then, after stating the principles of justice and expediency on which the practice of extradition was founded, mentioned two important limitations. It should never, he said, be claimed or granted for trifling offences. They were not sufficiently injurious to the welfare of the state, and he added, " Il faut une raison puissante pour faire rechercher sur la terre étrangère l'homme qui s'est puni par l'eloignement volontaire de sa patrie."

The other exception regarded political offences.

" Les crimes politiques s'accomplissent dans des circonstances si difficiles à apprécier, ils naissent de passions si ardentes, qui souvent sont leur excuse, que la France maintient le principe que l'extradition ne doit pas avoir lieu pour fait politique. C'est une règle qu'elle met son honneur à soutenir. Elle a toujours refusé, depuis 1830, de pareilles extraditions; elle n'en demandera jamais."

Of the remainder of the circular, which deals with the rules to be observed in all cases of extradition, the following is a summary :*—

1. Extradition does not apply to persons who have taken refuge in their own country; conse-

* The circular is given in full in Dalloz, Jurisp. Gén, (1841,) iii. 440.

quently France can only demand the extradition of a Frenchman, or of a foreigner who has taken refuge in a country other than that to which he belongs.

2. Extradition can only be admitted with regard to a person accused of an act punishable with severe and degrading punishment, (*peine afflictive ou infamante*) that is to say, of a crime other than a political crime, and not of a misdemeanour, (*délit.*) It follows that if the extradition has been obtained of a person accused at once of a crime and a misdemeanour, he ought not to be put upon his trial for the misdemeanour.

So in the case of the surrender of a person accused of an ordinary crime, and a political crime, he should only be tried for the former, and if acquitted, or after the expiration of his punishment, he must leave France within a time fixed by the government.

3. The order of extradition states the act upon which it is founded, and that act alone should be investigated.

Whence it follows, that if, during the trial of the crime for which extradition has been granted, proofs are discovered of another crime, a new demand in extradition must be made.

4. The government alone is competent to decide the scope of an order of extradition, and to interpret its terms; the courts must suspend proceedings until that decision is given.

5. The government alone is entitled to make a demand of extradition upon a foreign power; the *procureurs généraux* can only correspond with the magistrates of neighbouring and friendly states in order to obtain information.

6. The *Procureur-Général* should forward to the department of the ministry of justice, with an explanatory letter, the demand of extradition, accompanied by a warrant of arrest, or by a

decree of the *chambre des mises en accusation*, or by a decree of condemnation, either after jury trial or *par contumace*, according to the state of the proceedings.

The Belgian and Spanish governments are in the habit of only granting extradition upon the production of the decree of the *chambre des mises en accusation*.

7. If, pending the demand of extradition, the act which has prompted it has lost the character of a crime, and become a misdemeanour, or if the accusation has been annulled, (s'il est intervenu un arrêt de non lieu,) the minister should be informed without delay, that the demand may be withdrawn, or the accused set at liberty and conducted to the frontier.

8. When the accused is delivered up, he is at first in the charge of the administrative authority, then received by the *Procureur-Général*, who takes measures for sending him to the place where the accusation should be prosecuted.

9. The government has the exclusive right of deciding upon demands of extradition made by foreign governments, although the magistrates of these countries sometimes forward warrants, orders of arrest, or records of conviction, directly to the magistrates of the French tribunals; these documents should immediately be transmitted to the department of the ministry of justice.

10. In France the execution of a royal decree of extradition is intrusted to the administrative authority.

11. If the foreigner whose extradition has been granted is at the time under accusation, or undergoing a sentence, the execution of the order of extradition must be postponed until the decision upon the charge or the expiration of the sentence. Nevertheless, the extradition cannot be hindered

by anything but the requirements of public justice, as, for instance, if the foreigner were detained for debt.

Abrogation of the circulars upon extradition of 6th October 1810, 12th June 1816, and 31st July 1821.

The rule that a prisoner surrendered upon a charge of crime, but accused also of misdemeanour, should only be tried for the crime, had been acted upon in the case of Dermenon, who was given up by Geneva in 1840 on a charge of fraudulent bankruptcy. The *renvoi* of the *chambre des mises en accusation* ordered that, if acquitted on this charge, he should be tried for simple bankruptcy and breach of trust. He was so acquitted, and the minister of justice held himself bound to redeliver him to Geneva. That state refused to receive him; but the question whether this operated as a new extradition, or whether he ought to be liberated at the French frontier, was held to be purely a political matter.*

The rule was also recognised in the case of Sauve, a deserter from the French army, accused of theft. He was delivered up by Switzerland on the express condition that he should not be tried as a deserter, but only for the theft for which he had been condemned *par contumace*. It was held in this case, that the judges empowered according to the information, to judge of the misdemeanour as well as the crime, ought to declare themselves without jurisdiction over the former. Sauve was tried and condemned as a deserter; but this judgment was overruled by the Conseil de Revision de Paris, and he was sent back to be allowed to purge his contumacy, and to be tried for the thefts charged against him.†

* Dalloz, Jurisp. Gén., (1840,) i. 438.
† *Ibid.*, (1862,) v. 159.

Other cases, however, show that the principle must be taken with some modifications.

In the case of Wolf Cromback in 1845, the prisoner was delivered up by Switzerland for "faux en écriture de commerce." The order of extradition was general, but this was the only description of forgery specified in the treaty under which he was claimed. On his trial the writings proved not to be of a commercial character, and he was convicted of "faux en écriture privée." He thereupon prayed the court that he might be sent back to Switzerland, quoting Dermenon's case; but this point was overruled, and he was sentenced to five years of "reclusion," and to "l'exposition." He appealed to the Cour de Cassation, which, after deliberation in Chambre de Conseil, decided, that as the treaty provided for the delivery up, not only of those declared guilty, but of those pursued as such, in virtue of warrants certified by the proper legal authority, the legality of the extradition and of its consequences must be tested, not by reference to the gravity and legal character of the crime as described in the sentence of condemnation, but with regard to the original charge against him upon which he was pursued. The appeal was therefore rejected.*

In the same year the Abbé Grandvaux, charged with "faux en écriture privée et d'enlevement de mineure," was given up by Tuscany, with an express stipulation that he should not be tried for the latter offence. The *chambre des mises en accusation*, however, finding there were no sufficient grounds for the heavier charge, remanded him, and instructed the Cour d'Assises to try him for the smaller offence. On appeal against this *arrêt*, the Cour de Cassation held that the criminal courts must proceed without regard to the

* Dalloz, Jurisp. Gén., (1845,) i. 111.

conditions of extradition. That was a matter for the consideration of the government, which might prevent the execution of the sentence, and redeliver the criminal.*

In a much more recent case, that of Pascal, surrendered by Spain in 1858, the Cour de Cassation held that if the appellant, whose extradition had been granted upon a charge of rape, and of an indecent assault, with violence, had only been convicted of an indecent assault, without violence, upon a child of less than eleven years, it was clear that it was the same act differently described, and therefore there was no ground for a reference to the limitations in the order of extradition.†

It has been decided that the conditions in a grant of extradition are stipulations in favour of the accused, which he may waive if he thinks it advisable. But if, being accused of fraudulent bankruptcy and simple bankruptcy, and given up for the former, he allows himself to be tried for fraudulent bankruptcy only, without renouncing the benefit of the terms of the order of extradition, he cannot afterwards complain that the question of simple bankruptcy was not left to the jury.‡

The other French decisions refer chiefly to the incompetence of the tribunals to consider the legality of the surrender which has been made. The doctrine was fully laid down in the case of Burgerey in 1841. He was given up by the Republic of Berne on a charge which did not come within the treaty. He appealed against his conviction, but the Cour de Cassation held that the two countries might have extended or modified the Convention by subsequent agreements, according to the requirements and obligations of the friendly

* Dalloz, Jurisp. Gén., (1845,) i. 405.
† *Ibid.*, (1863,) v. 176.
‡ Le Sieur Pascal, *ibid.*, (1847,) i. 202.

relations which subsisted between them; that the French tribunals were not called upon to inquire into the reasons which had determined the Republic of Berne, the sole guardian of its own independence and dignity, to grant the extradition; and that whether it had been demanded, or spontaneously accorded, the prisoner had been legally remitted to the jurisdiction of the law by which his crime was punishable.*

The Cour d'Assises of the Seine also decided in 1846, (December 13,) that as the right of extradition was inherent in every government, and treaties only regulated this pre-existent right, it was not giving a retrospective operation to a treaty to try a fugitive surrendered under it for an offence committed before the treaty was concluded.† At the present time France has no less than fifty-three treaties of extradition with different powers.

CHAPTER VII.

RULES OF PRACTICE IN THE DIFFERENT COUNTRIES.

It may be useful to gather up in a short chapter the various rules mentioned in the foregoing pages, with regard to the practical proceedings on demands made upon each of the countries whose law upon this subject has been considered. Demands by Great Britain upon France are always

* Dalloz, Jurisp. Gén., (1841,) i. 440. And see the cases of L'Abbé Laugé, Dalloz, J. G., (1845,) i. 223; Basanesi, *ibid.*, 405; Cruveillé, Dalloz, J. G., (1847,) i. 94; Viremaitre, J. G., (1851,) v. 248; Dareau, J. G., (1853,) v. 215; Chardon, J. G., (1865,) i. 248.

† Davia, Dalloz, J. G., (1847,) iv. 249.

made by the ambassador in Paris in the name of the English government directly upon the French government, and are supported by a warrant of arrest issued by a magistrate in England, and copies of the depositions upon which it was founded. These last, however, are not necessary, the French authorities being contented to deliver up the fugitive upon the production of the warrant of arrest only. The papers are always taken to France by a police-officer able to speak to the identity of the accused. Upon this, the demand is considered by the French government, and if it be granted, the fugitive is arrested and given up without any investigation by a French court. The matter is purely one of state, with which no legal tribunal is competent to deal.*

In the case of criminals surrendered to France, an *arrêt de renvoi* is issued by the *chambre des mises en accusation*, directing the court within whose jurisdiction the offence was committed to bring the prisoner to trial. If this *arrêt* directs a trial upon a charge other than that for which he was surrendered, it is in the discretion of the government to interfere and prevent the trial. Or the prisoner himself may appeal to the Cour de Cassation against the *arrêt*. The cases show, however, that the court will not upon this ground annul it.† If this appeal be not made, the trial takes place upon the charge named in the *arrêt de renvoi*, and no objection raised by the prisoner during its continuance, as to the legality of the surrender, is a reason for the postponement of judgment, upon the facts which have been submitted to the jury. This judgment can only be suspended by the appeal just mentioned against the *arrêt de renvoi*. After trial and sentence an appeal lies to the Cour de Cassation.

* See *ante*, p. 91. † See *ante*, p. 95.

If the prisoner be acquitted, or at the end of his sentence, he is conducted to the frontier and there set at liberty.

A demand in extradition upon England must be made upon one of the principal secretaries of state, the chief secretary of the Lord-Lieutenant of Ireland, or the governor of any foreign colony or possession of her Majesty by the ambassador or other diplomatic agent of the foreign government. In the Act 25 and 26 Vict., c. 70, which gives effect to the treaty with Denmark,* it is provided by the third section, that where the fugitive has fled from a colony or possession of the King of Denmark to a colony or possession of her Majesty, the demand may be made by the governor of the former upon the governor of the latter, and may be either granted at once or referred to the home government. This provision of the treaty is reciprocal.

The demand need not be accompanied by any copies of depositions, or even of a warrant of arrest issued in the foreign country, but it is usual for the Secretary of State to require some *prima facie* evidence of guilt to be laid before him. If, on consideration, he thinks the surrender should be granted, he issues his warrant, signifying that this requisition has been made, and requiring all magistrates to govern themselves accordingly, and to aid in apprehending the fugitive and committing him to prison to be delivered up pursuant to the treaty. This warrant is then taken before a magistrate, who, on the production of the foreign warrant of arrest, and also of some evidence that the accused has committed an offence within the treaty, issues his warrant of arrest. A form for this warrant is given in a schedule to 8 and 9 Vict., c. 120,† and although the Act applies in terms only to police magistrates of the metropolis, the forms given in

* See Appendix, p. 151. † See Appendix. p. 126.

the schedule may be used by any magistrate.* By this Act, the warrant of a metropolitan police magistrate may be executed in any part of England. The prisoner being apprehended and brought before the magistrate, three things are necessary:—1. The identity of the prisoner must be proved. 2. Such evidence of criminality must be given, as according to the laws of the place where he has been found would justify his apprehension and commitment for trial if the crime or offence had been there committed. Some evidence upon this point is necessary in the first instance, but the magistrate has the usual powers of remand if it be not sufficient for commitment. 3. The magistrate must be satisfied either upon the facts of the case, or by the evidence of a foreign lawyer, that the offence charged comes within the definition of the crime contained in the treaty. This evidence must be taken in the prisoner's presence in the usual way. The evidence of criminality, however, may consist either wholly or in part of copies of depositions taken by a judge or competent magistrate in the country claiming the fugitive. These copies, as well as the foreign warrant of arrest, must, until the present year, (1866,) have been attested by the evidence of a person who had compared them with the originals, and could prove the signature of the judge. By the recent Act, (29 and 30 Vict., c. 121)† it is provided, that these documents shall be received, if the warrant of arrest purports to be signed by a judge or other competent magistrate of the country in which the same shall have been issued, and if the copies of depositions purport to be certified under the hand of such judge or magistrate to be true copies of the original depositions, and if the

* Cockburn, C. J., in Tivnan's case, 5 Best & Smith, 676.

† See Appendix, p. 157, and see note on the case of Charles Dubois (otherwise Coppin,) Appendix, p. 165.

signature of the judge or magistrate, in each case, shall be authenticated in the manner usual in the respective states or countries by the proper officer of the department of the minister of justice, and sealed with the official seal of such minister; and that all courts of justice and magistrates in her Majesty's dominions shall take judicial notice of such official seal, and shall admit the documents so authenticated by it to be received in evidence without further proof. The magistrate, upon this examination, either discharges the prisoner or commits him to gaol until he shall be delivered up pursuant to the treaty, and, in the latter case, certifies the fact to the Secretary of State, who immediately orders that the prisoner shall be surrendered to the person authorised by the foreign state to receive him. If he escapes, he may be retaken in the same manner as any person accused of a crime in that part of her Majesty's dominions. If not delivered up within two months, he may be discharged by order of any of her Majesty's judges. Notice of intention to apply for this order must be given to the Secretary of State, and the prisoner may be remanded into custody if reasonable cause be shown for the delay.

The practice in the United States and in Canada is similar to that of England, except that no previous authorisation from the executive is necessary for the apprehension of a fugitive in the first instance. The application may be made directly to a magistrate by any person. It must be supported by evidence similar to that required in England, and the magistrate's certificate to the Governor-General in Canada, or the Secretary of State in the United States, must be accompanied by copies of the depositions taken before him.

By neither of the three countries will condemned criminals be given up upon production of a record

of conviction, whether they have been condemned after trial by jury, or *en contumace*. But it has been suggested that the latter class might be surrendered as accused persons, the fact of the conviction being wholly omitted from the demand and the evidence.* By the English treaty with Denmark, special provision is made as to convicted persons, who are to be surrendered on production of an authenticated copy of the conviction.

The only important question which has arisen upon the rules of practice in England, the United States, and Canada, relates to the evidence upon which the magistrate is to commit. It is necessary that the evidence shall be such as would justify a commitment for trial if the crime had been committed in the country upon which the demand is made. Upon this a question has been much discussed as to the duty of the magistrate to receive evidence for the prisoner.

In the minutes of a conference upon the subject of an amendment of the existing treaty, held at Paris on February 8, 1866, the following paragraph occurs :—

"The question was then considered, how far the impression apparently entertained in France, that in a case of extradition the English magistrate actually tried the prisoner was well founded; and it appeared that the impression was unfounded. The prisoner brought before a magistrate on an extradition warrant would be entitled, indeed, to deny his identity with the person named in the warrant, and would further be entitled to have read in his presence the depositions on which he was charged; but he would not be permitted to controvert the truth of the depositions, or to

* See case of Charles Dubois, (otherwise Coppin,) Appendix, p. 165.

produce before the magistrate exculpatory evidence." *

On the other hand, it was said in debate in the House of Commons by the Attorney-General, (Sir Hugh Cairns,) that as to an accused person being precluded from entering into any other defence than a denial of his identity, he differed entirely from that view, for he apprehended that it would be quite open to him to produce any evidence in his power to controvert the allegations made in the depositions.† Neither of these conflicting propositions is exactly correct. It must be remembered that the magistrate investigating a case of demanded extradition, is not quite in the same position as if he were deciding on a charge of crime committed within his own jurisdiction. In the latter case he has full discretion. He may, and often does, discharge a prisoner because, although there is *prima facie* evidence of guilt, the circumstances are so obscure, the intent so doubtful, the testimony so conflicting, that he thinks a jury would not be likely to convict. But in a case of extradition he cannot consider these matters. If he find sufficient evidence of guilt to justify a commitment, the question of the probability of a conviction is not one for his consideration. But it naturally follows from this that he should be strict in requiring proof of the criminality of the acts which are charged. In an ordinary case he can commit the prisoner upon bail, and leave difficult questions of law to be dealt with by the court above. But in an extradition case he is to ascertain, not the commission of certain acts upon whose character another and higher tribunal may decide, but that there is suffi-

* Correspondence respecting the Extradition Treaty with France, July 1866, p. 18.

† Speech in the House of Commons, 3d August 1866.

cient evidence that the crime specified in a foreign warrant has by the prisoner been committed.

The words of the statutes are peculiar. "Such evidence as, according to the laws of that part of her Majesty's dominions, would justify the apprehension and committal for trial of the person so accused, if the crime of which he or she shall be so accused had been there committed."

The question was raised in Anderson's case whether the proviso, "according to the laws of that part of her Majesty's dominions," applied only to the nature and amount of evidence required, or extended to the nature of the crime,* and this has been much discussed in other cases noticed in the foregoing pages. To those cases the reader is referred for illustrations. It will suffice here to note the principles which apply to this subject.

It is clear, in the first place, that the proviso does relate to the nature and amount of evidence

* In Anderson's case this question did not necessarily arise. The crime charged against him upon the facts stated was murder by the law of England, as well as by that of the United States. The question, whether the circumstances showed sufficient provocation to reduce it to manslaughter, was one for the jury, and one with which the Canadian courts had nothing to do. Nor had these courts any right to inquire into the justice or policy of the legislative enactment under which the arrest was attempted to be made. That was a matter for the consideration of the foreign country, and could not, however it was resolved, affect the nature of the crime. An illustration may be given in the English Act, 14 and 15 Vict., cap. 19, by which if three poachers are out together at night armed, any person is authorised to apprehend them. It is very probable that American judges would disapprove of that Act, as part of what they might consider an iniquitous system of game laws; but so long as it remains upon the English Statute-book, a poacher killing a person so attempting to apprehend him would unquestionably be guilty of murder, and England would have an indisputable right to claim him under the treaty. So far as this question was decided in the case of Anderson, it was decided rightly. This was in the decision of the Queen's Bench (Canada) in favour of the surrender. *Ante*, p. 58. See also Reg. *v.* Sattler, 1 Dears and Bell, C. C., 525.

required. Thus, although by the English statute depositions may be received in lieu of oral testimony, the general English rules of evidence must be observed. Thus no hearsay evidence, no statements of the prisoner after threats or promises held out to him, could be received. Supposing sufficient unexceptionable evidence to be produced as to the facts, it cannot be the duty of the magistrate to receive evidence in contradiction on the part of the prisoner. However strong the contradiction might be, there would be a conflict of evidence on a matter of fact sufficient to go to a jury, and in that case the magistrate has no option but to commit.

This rule appears to govern the case of a denial of identity. That is a question of fact which could properly be submitted to a jury, and which is only decided by a magistrate in ordinary cases in the exercise of a discretion which he does not possess in matters of extradition. The American rules of practice are the same as those of England, and in Franz Müller's case the commissioner at New York refused to receive evidence of the *alibi* which was afterwards unsuccessfully attempted in England,* nor can there be any doubt of the propriety of his decision.

But the prosecution must produce sufficient evidence of criminality; that is, they must not only prove the commission of the acts described in the depositions, but also that they come within the definition of one of the crimes named in the Act under which proceedings are taken. If the crime has the same general definition in both countries, it is sufficient that the magistrate be satisfied upon the facts laid before him that the acts charged have the essential quality of that crime.† If, however, there be a difference in the meaning given to the

* See *ante*, p. 46. † Wideman's case.—See *ante*, p. 86.

term in the different countries, he must have the evidence of an expert in the foreign law that the acts charged would constitute the crime charged in the original warrant, and must be further satisfied, in the absence of express provision, of their having the essential ingredient of the crime so far as it is common to the law of both countries.* It is equally well established that if on examination the magistrate finds that the acts are not disputed, but that a justification is established, antecedent to, and independent of, the acts themselves, he must discharge the prisoner. This is seen in the various cases previously cited where murder or robbery has been charged on account of acts committed as belligerents.† If the belligerent character, or any similar justification (such, for instance, in a case of forgery, as the authority to sign) be established, the magistrate cannot commit the prisoner. In the case of the *Roanoke* at Bermuda, the prisoners were charged with piracy. They produced a commission from Jefferson Davis, the President of the Confederate States, and were immediately released; and upon complaint by the government of the Northern States the English government upheld the decision of the magistrate.

There can be no doubt that the magistrate is bound to afford the prisoner a reasonable opportunity of producing this class of evidence. But it will be observed that this rule applies only to evidence as to the quality of the act charged; removing it altogether from the class of crimes, by the operation of a rule of law, by showing that it had an antecedent justification. It is otherwise when it is desired by evidence as to the acts themselves to show a justification arising out of the circumstances, or to reduce the amount of guilt which is involved.

* Windsor's case, *ante*, p. 82. † See *ante*, pp. 60, 61, 77.

This question will arise most frequently upon charges of murder. In this case it is necessary to have *prima facie* evidence of a wilful killing. It may be that an antecedent justification may be shown of the class just noticed, and then the prisoner would be entitled to his release. But if not, the question upon the facts of the case whether the act charged is really murder, manslaughter, or homicide justified by the circumstances of the case, depends upon evidence of fact which is proper for the consideration of a jury, and upon which, therefore, the magistrate is not entitled to decide. If the prisoner be charged upon the foreign warrant with murder, and the evidence for the prosecution shows a *prima facie* case of wilful killing, it is not for the magistrate to decide how far provocation, terror, or accident affected the guilt of the act.

At the same time, it would only be reasonable, considering that the deportation to another country for trial is in itself a severe penalty, that the magistrate should allow anything to appear upon the depositions which the prisoner's advisers might believe would be useful to him in an appeal to a higher court against the commitment.

CHAPTER VIII.

CONCLUSION.

It has, the author hopes, been sufficiently established in the foregoing pages that the extradition of criminals is an international duty. It may not be scientifically described as a duty of perfect obligation, but it is certainly a duty of political

morality. And in countries like England, where it can only be performed in accordance with legislative provisions, it becomes the duty of the legislature to afford the means of its fulfilment. To refuse to do this in obedience to some fancied requirement of national independence and dignity is to pervert a valuable principle into a means of mischief to the whole world. But at the same time every possible precaution should be taken that the privilege thus accorded to foreign nations shall not be improperly used. These precautions are easily devised. It is not desirable that any interference should be permitted with the rule which has been laid down by England in every treaty of extradition but one, to which she has been a party, that a fugitive accused of crime should only be surrendered upon the production before a magistrate of such evidence as according to the English law would justify his commitment if the crime with which he is charged had been committed here. But without any interference with this, at present, essential rule, the surrender of criminals might be made much more easy. The Convention of 1852, excellent as in many respects it was, tried to effect the desired object by changes at the wrong stage of the procedure. It is not the difficulty of producing before a magistrate documentary evidence of guilt strictly authenticated that is the chief reason of the inefficacy of the existing laws. That was a difficulty of practice which never need have had any serious effect, and which has been safely removed by the recent Act. The principal cause of the practical failure of the treaties is felt at an earlier stage of the proceedings. At present, a demand has to be made upon the English government, and documentary evidence submitted to the Secretary of State. His warrant being issued, an application has then to

be made to a magistrate, and he, after having some evidence put before him, in his turn issues a warrant of arrest. Now, the criminal in almost every case has friends at the place from which he has fled who are able to discover that a demand is being made for his surrender. Or at any rate, he is very often able to find out that this application is being made in England, and he can evade the pursuit by further flight. This objection applies to the French practice as well as to ours, although in a somewhat less degree. The taking of the depositions in England, and the formal demand upon the French government, are means of warning the fugitive, and the French decision as to granting the surrender is so long delayed that the warning often proves effectual. Between 1852 and 1865 nine demands of extradition were made under the French Convention by the British government. Of these one was withdrawn, two were refused because the offences charged did not come within the treaty, and one because the criminal was a French subject. In one case of the remaining five no answer was given to the demand; in the other four the surrender was granted, but that after so long an interval, that only in a single case was the fugitive arrested.*

The obvious remedy for this would be to give to any magistrate the power of issuing a warrant of arrest upon complaint made before him by some responsible person, without any previous authorisation from the Secretary of State. This is the law in Canada, and has there been found to produce no ill result.†

No doubt the actual surrender should only be

* See Appendix, p. 150.

† The Lamirande case (see Appendix, p. 158) does not touch this question. A similar case might at any time occur under the English law.

upon demand made by the responsible minister of one country, and granted by the responsible minister of the other. But this demand and accordance might just as well be made after the evidence had been heard by the magistrate as before, and by this course the law would be rendered more effective, while the accused person would have the same safeguard as now in the necessity of sufficient evidence of his guilt being produced to the magistrate, and in his power of testing the validity of the commitment by application for a writ of habeas corpus. Indeed, the delay which would take place through the necessity of the Secretary of State's investigation of the case after instead of before the hearing by a magistrate, would be an additional safeguard to the prisoner, in affording more time for the decision by a higher court of any questions which might arise.

The fact that by law no such opportunity is afforded at present, is a serious objection to the existing practice. In the case of an ordinary prisoner, an examination of the copies of the depositions against him, and of his commitment thereupon, can at any time be obtained. But a fugitive once surrendered has no future opportunity of testing the legality of the proceedings by which he has been deprived of liberty. In two cases, those of Anderson and Jacques Besset,* important questions have arisen upon the form of the magistrate's warrant of commitment. But as the law at present stands, the judges will not consider an application for a writ of habeas corpus unless the final committal has taken place,† and when that is done, the

* See Anderson's case, *ante*, p. 56 ; Besset's case, *ante*, p. 71.

† In Tivnan's case it was expressly said that the course then taken was not to be made a precedent. See *ante*, p. 78, *n*.

prisoner may be delivered up within an hour. It is only by the favour of the Home Secretary that he has any opportunity of applying for the writ by which alone the committal can be tested. Even if he obtains this indulgence, he makes the application under disadvantageous circumstances, as he is not allowed a copy of the depositions which have been taken against him. All these objections would be in great measure removed by an alteration of the practice such as is here suggested. With regard to political offences there is no greater difficulty. It should be provided, that no surrender should be granted except on the declaration of the minister of the foreign power that the fugitive is wanted for trial for the offence charged in the depositions used against him and no other. If treaties are made, there are abundant models for a clause which would protect political offenders from rendition. The clause lately proposed in the House of Commons was probably hastily drawn up, and was obviously faulty. It provided:—

"Nothing in this Act, or in any previous Acts relating to treaties of extradition, shall be construed to authorise the extradition of any person in whose case there shall be reasonable grounds for believing that his offence, if any, had for its motive or purpose the promotion or prevention of any political object; nor to authorise the extradition of any person the requisition for the delivery of whom shall not contain an undertaking on the part of the sovereign or government making such requisition that such person shall not be proceeded against, or punished on account of, any offence which he shall have committed before he shall be delivered up other than the offence specified in the requisition."

This assumed that a political crime could be correctly defined as a crime committed from poli-

tical motives. As was pointed out in the debate, the murder of President Lincoln, and the shooting of a policeman in Ireland by Fenian assassins, were both crimes committed for political reasons; but no one would pretend that they were any the less murders; and murders, the perpetrators of which it would be a disgrace to any nation to harbour. If Booth had escaped to England, there would have been little debate as to the propriety of giving him up to be tried for murder.

The killing of a man in civil war, the seizure of property by the leaders of an armed rebellion, are examples of true political crimes. So far as rules upon the subject can be laid down, the provision of the Convention of 1852, and the clauses inserted in treaties made by France with other foreign nations, afford good models for imitation.* But the line is a narrow one, and it would be well to leave to the Secretary of State a discretion which he would exercise in responsibility to Parliament. The existence of slavery in some countries causes another difficulty which might be got over either by a provision similar to that in the treaty between the United States and Mexico, which stipulated that no slave should be surrendered, or which would be far better, by limiting the rendition of slaves to cases of the most atrocious crimes.

These are really the only points of difficulty, and it is not too much to hope that in the course of the discussion soon to take place, a scheme may be devised which, while affording every proper safeguard to the fugitive, may at the same time remove from England the reproach of being one of the least ready of all the nations of the world to perform her duty in this matter as a member of the family of civilised communities.

* Appendix, p. 177.

APPENDIX.

APPENDIX.

CONVENTION BETWEEN GREAT BRITAIN AND FRANCE, FOR THE MUTUAL SURRENDER, IN CERTAIN CASES, OF PERSONS FUGITIVE FROM JUSTICE.—*Signed at London, February* 13, 1843.

[Ratifications exchanged at London, March 13, 1843.]

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, and his Majesty the King of the French, having judged it expedient, with a view to the better administration of justice, and to the prevention of crime within their respective territories and jurisdictions, that persons charged with the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up;

Their said Majesties have named as their Plenipotentiaries to conclude a Convention for this purpose, that is to say:—

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honourable George Earl of Aberdeen, Viscount Gordon, Viscount Formartine, Lord Haddo, Methlick, Tarvis, and Kellie, a Peer of the United Kingdom, a Member of her Majesty's Most Honourable Privy Council, Knight of the Most Ancient and Most Noble Order of the Thistle, and her Majesty's Principal Secretary of State for Foreign Affairs;

And his Majesty the King of the French, the Sieur Louis de Beaupoil, Count of Sainte Aulaire, a Peer of France, Grand Officer of the Royal Order of the Legion of Honour, Grand Cross of the Order of Leopold of Belgium, his Ambassador Extraordinary to her Britannic Majesty;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles:—

La Convention conclue, le 13 Fév. 1843, entre la France et la Grande-Bretagne, pour l'Extradition Reciproque des Malfaiteurs.

Sa Majesté la Reine du Royaume Uni de la Grande Bretagne et d'Irlande, et sa Majesté le Roi des Français, ayant jugé convenable, en vue d'une meilleure administration de la justice, et pour prévenir les crimes dans leurs territories et juridictions respectives, que les individus accusés des crimes ci-après énumérés, et qui se seraient soustraits par la fuite aux poursuites de la justice, fussent, dans certaines circonstances, réciproquement extradés ;

Leurs dites Majestés ont nommé pour leurs Plénipotentiaires à l'effet de conclure dans ce but une Convention, savoir :—

Sa Majesté la Reine du Royaume Uni de la Grande Bretagne et d'Irlande, le Très Honorable George Comte de Aberdeen, Vicomte Gordon, Vicomte Formartine, Lord Haddo, Methlick, Tarvis, et Kellie, Pair du Royaume Uni, Conseiller de sa Majesté en son Conseil Privé, Chevalier du Très Ancien et Très Noble Ordre du Chardon, et Principal Secrétaire d'Etat de sa Majesté pour les Affaires Etrangères ;

Et sa Majesté le Roi des Français, le Sieur Louis de Beaupoil, Comte de Sainte Aulaire, Pair de France, Grand Officier de l'Ordre Royal de la Légion d'Honneur, Grand Croix de l'Ordre de Léopold de Belgique, son Ambassadeur Extraordinaire près sa Majesté Britannique ;

Lesquels, après s'être communiqué leurs pleins pouvoirs respectifs, trouvés en bonne et due forme, ont arrêté et conclu les Articles suivants :—

ARTICLE I.

It is agreed that the High Contracting Parties shall, on requisitions made in their name through the medium of their respective Diplomatic Agents, deliver up to justice persons who, being accused of the crimes of murder (comprehending the crimes designated in the French Penal Code by the terms assassination, parricide, infanticide, and poisoning,) or of an attempt to commit murder, or of forgery, or of fraudulent bankruptcy, committed within the jurisdiction of the requiring party, shall seek an asylum, or shall be found within the territories of the other: provided that this shall be done only when the commission of the crime shall be so established as that the laws of the country where the fugitive or person so accused shall be found would justify his apprehension and commitment for trial, if the crime had been there committed.

Consequently, on the part of the French Government, the surrender shall be made only by the authority of the Keeper of the Seals, Minister of Justice, and after the production of a warrant of arrest or other equivalent judicial document, issued by a Judge, or other competent authority, in Great Britain, clearly setting forth the acts for which the fugitive shall have rendered himself accountable; and on the part of the British Government, the surrender shall be made only on the report of a Judge or Magistrate duly authorised to take cognizance of the acts charged against the fugitive in the warrant of arrest or other equivalent judicial document, issued by a Judge or competent Magistrate in France, and likewise clearly setting forth the said acts.

ARTICLE II.

The expenses of any detention and surrender made in virtue of the preceding Article shall be borne and defrayed by the Government in whose name the requisition shall have been made.

ARTICLE III.

The provisions of the present Convention shall not apply in any manner to crimes of murder, forgery, or fraudulent bankruptcy, committed antecedently to the date thereof.

ARTICLE IV.

The present Convention shall be in force until the 1st of January 1844, after which date either of the High Contracting Parties shall be at liberty to give notice to the

ARTICLE I.

Il est convenu que les Hautes Parties Contractantes, sur les réquisitions faites en leur nom par l'intermédiaire de leurs Agents Diplomatiques respectifs, seront tenues de livrer en justice les individus qui, accusés des crimes de meurtre (y compris les crimes qualifiés dans le Code Pénal Français d'assassinat, de parricide, d'infanticide, et d'empoisonnement,) ou de tentative de meurtre, ou de faux, ou de banqueroute frauduleuse, commis dans la juridiction de la partie requérante, chercheront un asile, ou seront rencontrés dans les territoires de l'autre : pourvu que cela n'ait lieu que dans le cas où l'existence du crime sera constatée de telle manière que les lois du pays où le fugitif ou individu ainsi accusé sera rencontré justifieraient sa détention, et sa mise en jugement, si le crime y avait été commis.

En conséquence, l'extradition ne sera effectuée, de la part du Gouvernement Français, que sur l'avis du Garde de Sceaux, Ministre de la Justice, et après production d'un mandat d'arrêt ou autre acte judiciaire équivalent, émané d'un Juge ou d'une autorité compétente de Grande Bretagne, énonçant clairement les faits dont le fugitif se sera rendu coupable ; et elle ne sera effectuée de la part du Gouvernement Britannique, que sur le rapport d'un Juge ou Magistrat commis à l'effet d'entendre le fugitif sur les faits mis à sa charge par le mandat d'arrêt ou autre acte judiciare équivalent, émané d'un Juge ou Magistrat compétent en France, et énonçant également d'une manière précise les dits faits.

ARTICLE II.

Les frais de toute détention et extradition opérées en vertu de l'Article précédent seront supportés et payés par le Gouvernement au nom duquel la réquisition aura été faite.

ARTICLE III.

Les dispositions de la présente Convention ne s'appliqueront en aucune manière aux crimes de meurtre, de faux, ou de banqueroute frauduleuse, commis antérieurement à sa date.

ARTICLE IV.

La présente Convention sera en vigueur jusqu'au 1 Janvier 1844 ; après cette époque l'une des Hautes Parties Contractantes pourra déclarer à l'autre son intention de

other of its intention to put an end to it; and it shall altogether cease and determine at the expiration of six months from the date of such notice.

ARTICLE V.

The present Convention shall be ratified, and the ratification shall be exchanged at London at the expiration of three weeks from its date, or sooner if possible.

In witness whereof, the respective Plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

Done at London, the 13th day of February, in the year of our Lord 1843.

(L.S.) ABERDEEN.
(L.S.) STE. AULAIRE.

ACT OF THE BRITISH PARLIAMENT "FOR GIVING EFFECT TO A CONVENTION BETWEEN HER MAJESTY AND THE KING OF THE FRENCH, FOR THE APPREHENSION OF CERTAIN OFFENDERS."

6 and 7 Vict., c. 75.—*August* 22, 1843.

WHEREAS by a Convention between her Majesty and the King of the French, signed at London on the 13th day of February, in the year 1843,* the ratifications whereof were exchanged at London on the 13th day of March in the same year, it was agreed, "that the High Contracting Parties should, on requisitions made in their name through the medium of their respective diplomatic agents, deliver up to justice persons who, being accused of the crimes of murder, (comprehending the crimes designated in the French Penal Code by the terms assassination, parricide, infanticide, and poisoning,) or of an attempt to commit murder, or of forgery, or of fraudulent bankruptcy, committed within the jurisdiction of the requiring party, should seek an asylum, or should be found within the territories of the other: provided that this should be done only when the commission of the crime should be so established as that the laws of the country where the fugitive or person so accused should be found would justify his apprehension and commitment for trial if the crime had been there committed;" and it is by the said Convention further stipulated, "that on the part of the British government the surrender should be made only on the report of a judge or magistrate duly authorised to take

* See p. 114.

la faire cesser ; et elle cessera en effet à l'expiration des six mois qui suivront cette déclaration.

ARTICLE V.

La présente Convention sera ratifiée, et les ratifications seront échangées à Londres à l'expiration de trois semaines à partir de sa date, ou plus tôt si faire si peut.

En foi de quoi les Plénipotentiaires respectifs l'ont signée, et y ont apposé les cachets de leurs armes.

Fait à Londres, le 13 Février, l'an de grâce 1843.

(L.S.) ABERDEEN.
(L.S.) STE. AULAIRE.

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cognisance of the acts charged against the fugitive in the warrant of arrest, or other equivalent judicial document, issued by a judge or competent magistrate in France, and likewise clearly setting forth the said acts ;" and it is by the said Convention further stipulated and agreed, "that the expenses of any detention and surrender made in virtue of the stipulations hereinbefore recited should be borne and defrayed by the government in whose name the requisition should have been made ;" and it is by the said Convention further stipulated and agreed, "that the provisions of the said Convention should not apply in any manner to crimes of murder, forgery, or fraudulent bankruptcy committed antecedently to the date thereof ;" and it is by the said Convention further stipulated and agreed, "that the said Convention should be in force until the 1st day of January in the year 1844, after which date either of the High Contracting Parties should be at liberty to give notice to the other of its intention to put an end to it, and it should altogether cease and determine at the expiration of six months from the date of such notice ;" and whereas it is expedient that provision should be made for carrying the said Convention into effect : be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that in case requisition be duly made, pursuant to the said Convention, in the name of his Majesty, the King of the French, by his ambassador or other accredited diplomatic agent, to deliver up to justice any person who, being accused of

having committed, after the ratification of the said Convention, the crime of murder (comprehending the crimes designated in the French Penal Code by the terms assassination, parricide, infanticide, and poisoning,) or of an attempt to commit murder, or of forgery, or of fraudulent bankruptcy, within the territories and jurisdiction of his said Majesty, the King of the French, shall be found within the dominions of her Majesty, it shall be lawful for one of her Majesty's principal secretaries of state, or in Ireland for the chief secretary of the Lord-Lieutenant of Ireland, and in any of her Majesty's colonies or possessions abroad for the officer administering the government of any such colony or possession, by warrant under his hand and seal, to signify that such requisition has been so made, and to require all justices of the peace and other magistrates and officers of justice within their several jurisdictions to govern themselves accordingly, and to aid in apprehending the person so accused and committing such person to gaol, for the purpose of being delivered up to justice, according to the provisions of the said Convention, and thereupon it shall be lawful for any justice of the peace, or other person having power to commit for trial persons accused of crimes against the laws of that part of her Majesty's dominions in which such supposed offender shall be found, to examine upon oath any person or persons touching the truth of such charge, and upon such evidence as, according to the laws of that part of her Majesty's dominions, would justify the apprehension and committal for trial of the person so accused, if the crime of which he or she shall be so accused had been there committed, it shall be lawful for such justice of the peace, or other person having power to commit as aforesaid, to issue his warrant for the apprehension of such person, and also to commit the person so accused to gaol, there to remain until delivered pursuant to such requisition as aforesaid.

2. Provided always, and be it enacted, that in every such case copies of the depositions upon which the original warrant was granted, certified under the hand of the person or persons issuing such warrant, and attested upon the oath of the party producing them to be true copies of the original depositions, may be received in evidence of the criminality of the person apprehended.

3. And be it enacted, that it shall be lawful for one of her Majesty's principal secretaries of state, or in Ireland for the chief secretary of the Lord-Lieutenant of Ireland,

and in any of her Majesty's colonies or possessions abroad for the officer administering the government of any such colony or possession, by warrant under his hand and seal, to order the person so committed to be delivered up to such person or persons as shall be duly authorised in the name of the said King of the French to receive the person so committed, and convey such person to the dominions of the said King of the French, to be tried for the crime of which such person shall be so accused, and such person shall be delivered up accordingly; and it shall be lawful for the person or persons authorised as aforesaid to receive the person so charged with crime and committed as aforesaid, to hold such person in custody, and take him or her to the dominions of the King of the French, pursuant to the said Convention; and if the person so accused shall escape out of any custody to which he or she shall be committed, or to which he or she shall be delivered as aforesaid, it shall be lawful to retake such person, in the same manner as any person accused of any crime against the laws of that part of her Majesty's dominions to which he or she shall so escape may be retaken upon an escape: provided always, that no justice of the peace or other person shall issue his warrant for the apprehension of any such supposed offender until it shall have been proved to him, upon oath or by affidavit, that the party applying for such warrant is the bearer of a warrant of arrest or other equivalent judicial document issued by a judge or competent magistrate in France, authenticated in such manner as would justify the arrest of the supposed offender in France upon the same charge, or unless it shall appear to him that the acts charged against the supposed offender are clearly set forth in such warrant of arrest or other equivalent judicial document.

4. And be it enacted, that where any person who shall have been committed under this Act, to remain until delivered up pursuant to requisition as aforesaid, shall not be delivered up pursuant thereto, and conveyed out of her Majesty's dominions, within two calendar months after such committal, over and above the time actually required for conveying the prisoner from the gaol to which he or she was committed by the readiest way out of her Majesty's dominions, it shall in every such case be lawful for any of her Majesty's judges, in that part of her Majesty's dominions in which such supposed offender shall be in custody, upon application made to him or them by or on behalf of the person so committed, and upon

proof made to him or them that reasonable notice of the intention to make such application has been given to some or one of her Majesty's principal secretaries of state in Great Britain, or in Ireland to the chief secretary of the Lord-Lieutenant of Ireland, and in any of her Majesty's colonies or possessions abroad for the officer administering the government of any such colony or possession, to order the person so committed to be discharged out of custody, unless sufficient cause shall be shown to such judge or judges why such discharge ought not to be ordered.

5. And be it enacted, that if, by any law or ordinance to be hereafter made by the local legislature of any British colony or possession abroad, provision shall be made for carrying into complete effect within such colony or possession the objects of this present Act by the substitution of some other enactment in lieu thereof, then it shall be competent to her Majesty, with the advice of her Privy Council (if to her Majesty in Council it shall seem meet, but not otherwise) to suspend the operation within any such colony or possession of this present Act so long as such substituted enactment shall continue in force there, and no longer.

6. And be it enacted, that this Act shall continue in force during the continuance of the said Convention.

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6 & 7 VICT., CAP. LXXVI.

AN ACT FOR GIVING EFFECT TO A TREATY BETWEEN HER MAJESTY AND THE UNITED STATES OF AMERICA FOR THE APPREHENSION OF CERTAIN OFFENDERS.— *22d August* 1843.

Certain Offenders to be apprehended on Requisition of the United States.

WHEREAS by the tenth article of a treaty between her Majesty and the United States of America, signed at Washington on the ninth day of August in the year one thousand eight hundred and forty-two, the ratifications whereof were exchanged at London on the thirteenth day of October in the same year, it was agreed that her Majesty and the said United States should, upon mutual requisitions by them or their ministers, officers, or authorities respectively made, deliver up to justice all persons who, being charged with the crime of murder, or assault with

intent to commit murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged paper, committed within the jurisdiction of either of the High Contracting Parties, should seek an asylum or should be found within the territories of the other; provided that this should only be done upon such evidence of criminality as according to the laws of the place where the fugitive or person so charged should be found would justify his apprehension and commitment for trial if the crime or offence had been there committed, and that the respective judges and other magistrates of the two governments should have power, jurisdiction, and authority, upon complaint made under oath, to issue a warrant for the apprehension of the fugitive or person so charged, so that he might be brought before such judges or other magistrates respectively, to the end that the evidence of criminality might be heard and considered; and if on such hearing the evidence should be deemed sufficient to sustain the charge, it should be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant might issue for the surrender of such fugitive, and that the expense of such apprehension and delivery should be borne and defrayed by the party making the requisition and receiving the fugitive; and it is by the eleventh article of the said treaty further agreed, that the tenth article, herein-before recited, should continue in force until one or other of the High Contracting Parties should signify its wish to terminate it, and no longer: And whereas it is expedient that provision should be made for carrying the said agreement into effect; be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that in case requisition shall at any time be made by the authority of the said United States, in pursuance of and according to the said treaty, for the delivery of any person charged with the crime of murder, or assault with intent to commit murder, or with the crime of piracy, or arson, or robbery, or forgery, or the utterance of forged paper, committed within the jurisdiction of the United States of America, who shall be found within the territories of her Majesty, it shall be lawful for one of her Majesty's principal secretaries of state, or in Ireland for the chief secretary of the Lord-Lieutenant of Ireland, and in any of her Majesty's colonies or possessions abroad for the officer administering the government of any such colony or pos-

session, by warrant under his hand and seal to signify that such requisition has been so made, and to require all justices of the peace and other magistrates and officers of justice within their several jurisdictions to govern themselves accordingly, and to aid in apprehending the person so accused, and committing such person to gaol, for the purpose of being delivered up to justice, according to the provisions of the said treaty; and thereupon it shall be lawful for any justice of the peace, or other person having power to commit for trial persons accused of crimes against the laws of that part of her Majesty's dominions in which such supposed offender shall be found, to examine upon oath any person or persons touching the truth of such charge, and upon such evidence as according to the laws of that part of her Majesty's dominions would justify the apprehension and committal for trial of the person so accused if the crime of which he or she shall be so accused had been there committed it shall be lawful for such justice of the peace, or other person having power to commit as aforesaid, to issue his warrant for the apprehension of such person, and also to commit the person so accused to gaol, there to remain until delivered pursuant to such requisition as aforesaid.

Copies of the Depositions may be given in Evidence.

II. Provided always, and be it enacted, That in every such case copies of the depositions upon which the original warrant was granted, certified under the hand of the person or persons issuing such warrant and attested upon the oath of the party producing them to be true copies of the original depositions, may be received in evidence of the criminality of the person so apprehended.

Offenders to be delivered up.

III. And be it enacted, That upon the certificate of such justice of the peace, or other person having power to commit as aforesaid, that such supposed offender has been so committed to gaol, it shall be lawful for one of her Majesty's principal secretaries of state, or in Ireland for the chief secretary of the Lord Lieutenant of Ireland, and in any of her Majesty's colonies or possessions abroad for the officer administering the government of any such colony or possession, by warrant under his hand and seal to order the person so committed to be delivered to such person or persons as shall be authorised in the name of the said United States to receive the person so committed, and to

convey such person to the territories of the said United States, to be tried for the crime of which such person shall be so accused, and such person shall be delivered up accordingly, and it shall be lawful for the person or persons authorised as aforesaid to hold such person in custody, and take him or her to the territories of the said United States, pursuant to the said treaty; and if the person so accused shall escape out of any custody to which he or she shall be committed, or to which he or she shall be delivered as aforesaid, it shall be lawful to retake such person, in the same manner as any person accused of any crime against the laws of that part of her Majesty's dominions to which he or she shall so escape may be retaken upon an escape.

After two months the persons Apprehended may be Discharged, if not conveyed out of her Majesty's dominions.

IV. And be it enacted, That where any person who shall have been committed under this Act, to remain until delivered up pursuant to requisition as aforesaid, shall not be delivered up pursuant thereto, and conveyed out of her Majesty's dominions within two calendar months after such committal, over and above the time actually required to convey the prisoner from the gaol to which he or she was committed by the readiest way out of her Majesty's dominions, it shall in every such case be lawful for any of her Majesty's judges in that part of her Majesty's dominions in which such supposed offender shall be in custody, upon application made to him or them by or on behalf of the person so committed, and upon proof made to him or them that reasonable notice of the intention to make such application has been given to some or one of her Majesty's principal secretaries of state, or in Ireland to the chief secretary of the Lord Lieutenant of Ireland, and in any of her Majesty's colonies or possessions abroad for the officer administering the government of any such colony or possession, to order the person so committed to be discharged out of custody, unless sufficient cause shall be shown to such judge or judges why such discharge ought not to be ordered.

Limits of the Act.

V. And be it enacted, That if by any law or ordinance to be hereafter made by the local legislature of any British colony or possession abroad provision shall be made for carrying into complete effect within such colony or possession the objects of this present Act, by the substitution of some other enactment in lieu thereof, then it shall be com-

petent to her Majesty, with the advice of her Privy Council, (if to her Majesty in Council it shall seem meet, but not otherwise,) to suspend the operation within any such colony or possession of this present Act, so long as such substituted enactment shall continue in force there, and no longer.

Continuance of Act.

VI. And be it enacted, That this Act shall continue in force during the continuance of the tenth article of the said treaty.

AN ACT FOR FACILITATING EXECUTION OF THE TREATIES WITH FRANCE AND THE UNITED STATES OF AMERICA FOR THE APPREHENSION OF CERTAIN OFFENDERS.

8 & 9 Vict., cap. 120—*August* 8, 1845.

Any metropolitan police magistrate to whom it shall have been signified that a requisition has been made to deliver up any person pursuant to the said Convention or Treaty, may issue his warrant for the apprehension of such person in any part of England.

WHEREAS two Acts were passed in the seventh year of the reign of her Majesty, severally intituled "An Act for giving effect to a Convention between her Majesty and the King of the French for the apprehension of certain offenders," (6 & 7 Vict., c. 75,) and "An Act for giving effect to a treaty between her Majesty and the United States of America for the apprehension of certain offenders," (6 & 7 Vict., c. 76,) and it is expedient to make provision for giving more immediate effect to the warrant of any one of her Majesty's principal secretaries of state for the better execution of the said Convention and treaty respectively: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal and Commons, in this present Parliament assembled, and by the authority of the same, that any police magistrate of the metropolis, to whom any one of her Majesty's principal secretaries of state shall have signified, by warrant under his hand and seal, that requisition has been made pursuant to the said Convention or treaty respectively, to deliver up to justice, in terms of the said Convention or treaty, as the case may be, any person accused of any crime rendering him liable to be so delivered

up under either of the recited Acts, shall, upon such evidence as according to the laws of England would justify the apprehension of the person so accused if the crime of which he is accused had been committed in England within the jurisdiction of such magistrate, issue his warrant for the apprehension of such person, in the form annexed to this Act, or to the like effect; and such warrant may be executed in any part of England, and shall have the same force and effect throughout England as if the same had been originally issued or subsequently endorsed by a justice of the peace or magistrate having jurisdiction in the place where the same shall be executed, and may be lawfully executed anywhere within England by the constable or constables to whom the same shall be directed, or who shall be appointed to execute the same, who shall severally have all the powers and privileges for the execution of such warrant as any constable duly appointed hath or may have within his constablewick.

Such person when apprehended to be brought before a police magistrate, who may order his committal.

II. And be it enacted, That every person who shall be apprehended under any such warrant shall be brought with all convenient speed before the magistrate by whom such warrant shall have been issued, or some other magistrate of the same police court, and that such magistrate may cause the warrant of committal of such person to be drawn up according to the form given in the schedule annexed to this Act, or to the like effect, which shall be good and sufficient in law to warrant the persons to whom the same shall be directed to detain such person in custody, as directed in the said warrant, until delivered pursuant to the Act under which he shall have been apprehended.

Act to be construed with recited Acts.

III. And be it enacted, That this Act shall be construed with each of the said Acts separately, and as if this Act had been enacted in each of the said Acts.

Alteration of Act.

IV. And be it enacted, That this Act may be amended or repealed by any Act to be passed in this session of Parliament.

SCHEDULE TO WHICH THIS ACT REFERS.

Warrant of Apprehension.

Metropolitan Police District, to wit.

To all and each of the constables of the Metropolitan Police Force.

WHEREAS the Right Honourable one of her Majesty's principal secretaries of state, by warrant under his hand and seal, hath signified to me, that pursuant to the [Convention made between her Majesty and the King of the French in the year one thousand eight hundred and forty-three, *or* the treaty made between Her Majesty and the United States of America, in the year one thousand eight hundred and forty-two, *as the case may be*,] for the apprehension of certain offenders, requisition hath been duly made to him for delivering up to justice *A. B.*, late of who is charged with having committed the crime of [*here specify the offence*,] within the jurisdiction of [his Majesty the King of the French, *or* the United States of America, *as the case may be*.]

This is therefore to command you, in her Majesty's name, forthwith to apprehend the said *A. B.*, pursuant to an Act passed in the ninth year of the reign of her Majesty, intituled [*here insert the title of this Act*,] wherever he may be found in England, and bring him before me, or some other magistrate sitting in this court, to answer unto the said charge, for which this shall be your warrant.

Given under my hand and seal at , one of the police courts of the metropolis, this day of , in the year of our Lord.

J. P. (L.S.)

Warrant of Committal.

Metropolitan Police District, to wit.

To A. B., one of the constables of the Metropolitan Police Force, and to the keeper of the at .

Be it remembered, that on the day of , in the year of our Lord , *A. B.*, late of is brought before me, *J. P.*, one of the police magistrates of the metropolis, sitting at the police court in , within the metropolitan police district, and is charged before me, for that he the said A. B., on the day of at within the juris-

diction of [his Majesty the King of the French, *or* the United States of America, *as the case may be*,] did [*here state the offence:*] And forasmuch as it hath been shown to me, upon such evidence as by law is sufficient to justify the committal to gaol of the said *A. B.*, pursuant to an Act passed in the seventh year of the reign of Queen Victoria, intituled [*here insert the title of* the sixth and seventh *Victoria*, chapter seventy-five, or sixth and seventh *Victoria*, chapter seventy-six, *as the case may require*,] that the said *A. B.* is guilty of the said offence:

This is therefore to command you, the said constable, in her Majesty's name forthwith, to convey and deliver the body of the said *A. B.* into the custody of the said keeper of the at ; and you the said keeper to receive the said *A. B.* into your custody in the same , and him there safely to keep until he shall be thence delivered pursuant to the provisions of the said Act; for which this shall be your warrant.

Given under my hand and seal at one of the police courts of the metropolis, this day of in the year of our Lord.

J. P. (L.S.)

CONVENTION BETWEEN HER MAJESTY AND THE FRENCH REPUBLIC, FOR THE MUTUAL SURRENDER OF CRIMINALS. —*Signed at London, May* 28, 1852.

[Ratifications exchanged at London, June 2, 1852.]

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the Prince President of the French Republic, having found that the Convention concluded between Great Britain and France, on the 13th of February 1843, for the mutual surrender of criminals, has not completely attained its intended object, have deemed it expedient to conclude a new Convention on the subject, and have for that purpose named as their respective Plenipotentiaries, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honourable James Howard, Earl of Malmesbury, Viscount Fitzharris, Baron Malmesbury, a Peer of the United Kingdom, a Member of Her Britannic Majesty's Most Honourable Privy Council, and her Britannic Majesty's Principal Secretary of State for Foreign Affairs;

And the Prince President of the French Republic, the Sieur Alexander Colonna Count Walewski, Commander of the National Order of the Legion of Honour, Grand Cross of the Order of St Januarius of the Two Sicilies, Grand Cross of the Order of Merit of St Joseph of Tuscany, Ambassador of the French Republic to Her Britannic Majesty;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles:—

ARTICLE I.

The Government of Her Britannic Majesty and the French Government shall, on requisition made in their name by their respective Diplomatic Agents, deliver up to each other reciprocally, any persons, except native subjects or citizens of the Party upon whom the requisition may be made, who, being convicted or accused of any of the crimes hereinafter specified, committed within the jurisdiction of the requiring Party, shall be found within the territories of the other Party.

ARTICLE II.

The surrender shall be made on account of the following crimes, which, however differently denominated in the

La Convention conclue, le 28 Mai 1852, entre la République Française et la Grande Bretagne pour l'Extradition Réciproque des Malfaiteurs.

Sa Majesté la Reine du Royaume Uni de la Grande Bretagne et d'Irlande, et le Prince Président de la République Française, ayant reconnu que la Convention conclue, le 13 Février 1843, entre la Grande Bretagne et la France, pour l'extradition réciproque des malfaiteurs, n'a point complètement atteint le but proposé, ont jugé convenable de conclure à ce sujet une nouvelle Convention, et ont nommé à cet effet pour leurs Plénipotentiaires respectifs, savoir :

Sa Majesté la Reine du Royaume Uni de la Grande Bretagne et d'Irlande, le Très Honorable Jacques Howard, Comte de Malmesbury, Vicomte Fitzharris, Baron Malmesbury, Pair du Royaume Uni, Membre du Très Honorable Conseil Privé de Sa Majesté Britannique, et Principal Secrétaire d'Etat de Sa Majesté Britannique pour les Affaires Etrangères ;

Et le Prince Président de la République Française, le Sieur Alexandre Colonna Comte Walewski, Commandeur de l'Ordre National de la Légion d'Honneur, Grand-Croix de l'Ordre de Saint Janvier des Deux Siciles, Grand-Croix de l'Ordre du Mérite de Saint Joseph de Toscanne, Ambassadeur de la République Française près Sa Majesté Britannique ;

Lesquels, après s'être réciproquement communiqué leurs pleins pouvoirs respectifs, trouvés en bonne et due forme, sont convenus des Articles suivans :—

Article I.

Le Gouvernement de Sa Majesté Britannique et le Gouvernement Français se livreront réciproquement, chacun à l'exception de ses nationaux, sur la demande faite en leur nom par leurs Agens Diplomatiques respectifs, les individus qui, étant condamnés ou poursuivis pour l'un des crimes ci-après énumérés, commis dans la juridiction de la Partie réquérante, seraient trouvés sur le territoire de l'autre Partie.

Article II.

L'extradition sera accordée à raison des crimes suivans, lesquels, quelle que soit d'ailleurs leur dénomination dif-

respective legislations, are punishable under both with grave penalties, namely :—

1. The crime provided for and punished in France under the denomination of *homicide volontaire*, and in the United Kingdom under that of *murder;* whatever may be the means, the instrument, or the substance employed for the commission thereof.

It is understood that the surrender shall be made for an attempt to commit murder (*homicide volontaire*) as well as for that crime itself.

2. The crime of *procuring abortion:* provided for and punished in France and in the United Kingdom under the same denomination.

3. The crime provided for and punished in France under the denomination of *viol*, and in the United Kingdom under that of *rape;* including the crime of having carnal knowledge without violence of a girl under ten years of age, which is also provided for by the French Penal Code, and is punished in the same manner as *rape* in the United Kingdom.

4. *Blows and wounds followed by death:* a crime provided for and punished by the French Penal Code; and punished also in England and Ireland under the denomination of *manslaughter*, and in Scotland under the denomination of *culpable homicide.*

5. *Menaces in writing*, with an order to deposit a sum of money, or to perform any other condition: a crime provided for and punished by the French Penal Code: in England and Ireland under the denomination of *sending or delivering a letter or writing demanding with menaces*, &c.; and in Scotland under the denomination of *sending threatening or incendiary letters.*

6. *Bigamy:* a crime provided for and punished in France and in the United Kingdom under the same denomination.

7. *Carrying off a child:* a crime provided for and punished in France under that denomination by the Penal Code; in England and Ireland under the denomination of *child-stealing;* and in Scotland under the denomination of *theft or child-stealing.*

8. *False evidence:* a crime provided for and punished in France under that denomination by the Penal Code; by the English and Irish law under the denomination of *perjury;* and in Scotland under the denomination of *perjury or false affirmation.*

9. *Subornation of witnesses:* a crime provided for and

férente dans les deux législations, sont également punis par l'une et par l'autre de peines graves, savoir :—

1°. Le crime prévu et puni en France sous la dénomination de *homicide volontaire*, et dans le Royaume Uni sous celle de *murder;* quels que soient d'ailleurs le moyen, l'instrument, ou la substance employés pour le commettre.

Il est entendu que la tentative d'homicide volontaire (*murder*) pourra, comme le crime lui-même, donner lieu à l'extradition.

2°. Le crime de *procurer l'avortement:* prévu et puni en France et dans le Royaume Uni sous une pareille dénomination.

3°. Le crime prévu et puni en France sous la dénomination de *viol*, et dans le Royaume Uni sous celle de *rape;* y compris l'attentat consommé sans violence si la victime a moins de dix ans ; crime également prévu par le Code Pénal Français, et puni comme *rape* dans le Royaume Uni.

4°. Les *coups et blessures suivis de mort :* crime prévu et puni par le Code Pénal Français ; et puni aussi en Angleterre et en Irlande sous la dénomination de *manslaughter*, et en Ecosse sous la dénomination de *culpable homicide.*

5°. Les *menaces par écrit*, avec ordre de déposer une somme d'argent, ou de remplir toute autre condition : crime prévu et puni par le Code Pénal Français ; en Angleterre et en Irlande sous la dénomination de *sending or delivering a letter or writing demanding with menaces*, &c. ; et en Ecosse sous la dénomination de *sending threatening or incendiary letters.*

6°. *La bigamie :* crime prévu et puni en France et dans le Royaume Uni sous une pareille dénomination.

7°. *L'enlèvement d'un enfant :* crime prévu et puni en France sous cette dénomination par le Code Pénal ; en Angleterre et en d'Irlande (*sic*) sous la dénomination de *child-stealing ;* et en Ecosse sous la dénomination de *theft or child-stealing.*

8°. Le *faux témoignage :* crime prévu et puni en France sous cette dénomination par le Code Pénal ; par la loi Anglaise et Irlandaise sous la dénomination de *perjury ;* et en Ecosse sous la dénomination de *perjury or false affirmation.*

9°. La *subornation de témoins :* crime prévu et puni sous

punished under that denomination by the French Penal Code, and by the law of the United Kingdom under the denomination of *subornation of perjury.*

10. *Counterfeiting or altering money*, or *uttering* counterfeit or altered money: crimes provided for and punished in France and in the United Kingdom under the same denominations.

11. *Counterfeiting the Seal of the State*, or *using the counterfeit Seal; counterfeiting or falsifying of public securities and bank-notes authorised by law; using such counterfeit securities and notes*, or *introducing such counterfeit securities and notes:* crimes provided for and punished in France by the Penal Code; in the United Kingdom under similar denominations; and in Scotland also under the denomination of *falsehood and forgery.*

12. *Counterfeiting the puncheons used for marking articles of gold and silver;* and *using the counterfeit puncheons:* crimes provided for and punished in France by the Penal Code; and in the United Kingdom under the same denominations.

13. *Counterfeiting the public stamps;* and *using the counterfeit stamps:* crimes provided for and punished in France and in the United Kingdom under the same denominations.

14. *Forgery of public written instruments*, or *written instruments of commerce or banking*, or *private written instruments*, and *using such forged instruments:* crimes provided for and punished in France by the Penal Code; in England and Ireland under the denomination of *feloniously forging and uttering forged instruments;* and in Scotland under the denomination of *falsehood, forgery, and uttering.*

15. *Burning:* a crime provided for and punished in France by the Penal Code; in England and Ireland under the denomination of *arson and felonious burning;* and in Scotland under the denomination of *wilful fire-raising.*

16. *Stealing, when attended with violence or intimidation* towards the person whose property is stolen: a crime provided for and punished in France by the Penal Code, (including the case of extortion provided for in Article 400, § 1, of the said Code;) and in the United Kingdom under the denomination of *robbery.* The attempt to commit this crime shall not be placed upon the same footing as the crime itself, in regard to surrender, unless it shall have been made by at least two persons, or by a single person armed.

Stealing or attempting to steal, by night, in an inhabited

cette dénomination par le Code Pénal Français, et par la loi du Royaume Uni sous la dénomination de *subornation of perjury.*

10°. La *contrefaçon ou l'altération des monnaies,* ou *l'émission* de monnaies contrefaites ou altérées : crimes prévus et punis en France et dans le Royaume Uni sous une pareille dénomination.

11°. La *contrefaçon du Sceau de l'Etat,* ou *l'usage du Sceau contrefait ; la contrefaçon ou la falsification des effets publics et des billets de banques autorisés par la loi ; l'usage de ces effets et billets contrefaits,* ou *l'introduction des mêmes effets et billets contrefaits :* crimes prévus et punis en France par le Code Pénal ; dans le Royaume Uni sous une pareille dénomination ; et en Ecosse aussi sous la dénomination de *falsehood and forgery.*

12°. La *contrefaçon des poinçons servant à marquer les matières d'or et d'argent ;* et *l'usage de ces poinçons contrefaits :* crimes prévus et punis en France par le Code Pénal ; et dans le Royaume Uni sous une pareille dénomination.

13°. La *contrefaçon des timbres nationaux ;* et *l'usage de ces timbres contrefaits :* crimes prévus et punis en France et dans le Royaume Uni sous une pareille dénomination.

14°. Le *faux en écriture authentique,* ou *en écriture de commerce ou de banque,* et *en écriture privée ;* et *l'usage de ces actes faux :* crimes prévus et punis en France par le Code Pénal ; en Angleterre et en Irlande sous la dénomination de *feloniously forging and uttering forged instruments ;* et en Ecosse sous la dénomination de *falsehood, forgery, and uttering.*

15°. *L'incendie :* crime prévu et puni en France par le Code Pénal ; en Angleterre et en Irlande sous la dénomination de *arson and felonious burning ;* et en Ecosse sous la dénomination de *wilful fire-raising.*

16°. Le *vol commis à l'aide de la violence ou de l'intimidation* exercée sur la personne volée : crime prévu et puni en France par le Code Pénal, (y compris le cas d'extorsion prévu par l'Article 400, § 1, du même Code ;) et dans le Royaume Uni sous la dénomination de *robbery.* La tentative de ce crime ne sera considérée comme le crime lui-même, en ce qui concerne l'extradition, qu'autant qu'elle aura eu lieu par deux personnes au moins, ou par une seule personne armée.

Le *vol commis ou tenté la nuit dans une maison habitée,*

house, into which the robber has effected an entrance by breaking, scaling, false keys, or any guilty contrivance: a crime provided for and punished in France by the Penal Code; in England and Ireland under the denomination of *burglary;* and in Scotland under the denomination of *theft when committed by housebreaking, or housebreaking with intent to steal.*

Stealing in a building devoted to Divine worship: a crime provided for and punished in France by the Penal Code; in England and Ireland under the denomination of *stealing in a church or chapel;* and in Scotland under the denomination of *theft.*

Stealing in the day-time in an inhabited house, or in any place attached (*dépendance*) to an inhabited house: a crime provided for and punished in France by the Penal Code; in England and Ireland under the denomination of *housebreaking and stealing in a dwelling-house;* and in Scotland under the denomination of *theft.*

The crimes provided for and punished in France under the denomination of *vol domestique et abus de confiance domestique;* in England and Ireland under that of *larceny or embezzlement by clerks or servants;* and in Scotland under those of *theft, breach of trust, and embezzlement.*

17. The crimes provided for and punished in France under the denomination of *soustractions commises par des comptables ou par des dépositaires publics;* in England and Ireland under that of *embezzlement by public officers;* and in Scotland under the same denomination, and also under those of *theft, breach of trust, and embezzlement.*

18. *Fraudulent bankruptcy*, and *participation in fraudulent bankruptcy:* crimes provided for and punished in France by the Code of Commerce and the Penal Code; and in the United Kingdom under the same denomination; but in those cases only which in the United Kingdom are considered as felony, and punished by the penalty of transportation.

19. The crime of *destroying a ship or other merchant-vessel*, effected by any means whatever, in the cases where it shall have been committed by the captain, master, or pilot charged with the navigation of such ship or vessel: a crime provided for and punished in France by the Law of the 10th of April 1825; and in the United Kingdom under the same denomination.

The crime provided for and punished in France under the denomination of *baraterie*, and in the United Kingdom under that of *piracy.*

dont le voleur s'est procuré l'entrée à l'aide d'effraction, d'escalade, de fausses clefs, ou par une manœuvre coupable : crime prévu et puni en France par le Code Pénal ; en Angleterre et en Irlande sous la dénomination de *burglary ;* et en Ecosse sous la dénomination de *theft when committed by housebreaking, or housebreaking with intent to steal.*

Le *vol commis dans un édifice consacré au Culte :* crime prévu et puni en France par le Code Pénal ; en Angleterre et en Irlande sous la dénomination de *stealing in a church or chapel* ; et en Ecosse sous la dénomination de *theft.*

Le *vol commis le jour dans une maison habitée,* ou dans la dépendance d'une maison habitée : crime prévu et puni en France par le Code Pénal ; en Angleterre et en Irlande sous la dénomination de *housebreaking and stealing in a dwelling-house;* et en Ecosse sous la dénomination de *theft.*

Les crimes prévus et punis en France sous la dénomination de *vol domestique et abus de confiance domestique ;* en Angleterre et en Irlande sous celle de *larceny or embezzlement by clerks or servants ;* et en Ecosse sous celles de *theft, breach of trust, and embezzlement.*

17°. Les crimes prévus et punis en France sous la dénomination de *soustractions commises par des comptables ou par des dépositaires publics ;* en Angleterre et en Irlande sous celle de *embezzlement by public officers ;* et en Ecosse sous une pareille dénomination, comme aussi sous celles de *theft, breach of trust, and embezzlement.*

18°. La *banqueroute frauduleuse,* et *la complicité de banqueroute frauduleuse:* crimes prévus et punis en France par le Code de Commerce et le Code Pénal ; et dans le Royaume Uni sous une pareille dénomination ; mais seulement dans les cas qui sont considérés dans le Royaume Uni comme *felonies,* et punis de la peine de la transportation.

19°. Le crime de *destruction d'un navire ou autre bâtiment de commerce,* opérée par des moyens quelconques, dans le cas où il aurait été commis par le capitaine, maître, patron, ou pilote chargé de la conduite du dit navire ou bâtiment : crime prévu et puni en France par la Loi du 10 Avril 1825 ; et dans le Royaume Uni sous une pareille dénomination.

Le crime prévu et puni en France sous la dénomination de *baraterie,* et dans le Royaume Uni sous celle de *piracy.*

20. The crime of *mutiny among the crew of a ship;* in the case where persons forming part of the crew of a sea-going ship or vessel shall have taken possession thereof by fraud or violence committed upon the captain or commander; and also in the case where they shall have delivered over such ship or vessel to pirates: a crime provided for and punished in France by the Law of the 10th April 1825, and in the United Kingdom under the denomination of *piracy*.

The surrender shall, however, be demanded by either of the two Contracting Parties only in the following cases, that is to say: by the French Government, in those cases in which the acts herein-before enumerated shall in France be considered as *crimes*, and be punishable with severe and degrading punishments, (*peines afflictives et infamantes;*) and by the British Government, in those cases in which the said acts shall be considered as *felonies*, and be punishable with death, or transportation, or imprisonment with hard labour. It shall be sufficient for each Government, in order to prove that its demand is in this respect well founded, to annex thereto the article or articles, clause or clauses, of the law applicable to the act which may give rise to the surrender.

ARTICLE III.

On the part of the French Government, the surrender shall be made in the following manner:

The Ambassador or other Diplomatic Agent of Her Britannic Majesty at Paris, shall produce, in support of any demand for surrender, an authentic and duly legalised copy of a certificate of conviction, or of a warrant to apprehend a person indicted, or of a warrant to apprehend a person charged, clearly setting forth the nature of the crime with which the fugitive is charged. The judicial document thus produced shall be accompanied by the description of the person claimed, and by any particulars which may serve to identify him.

The Keeper of the Seals, Minister of Justice, shall examine the demand and the documents in support thereof; he shall forthwith address a report thereon to the President of the Republic; and, if there be found due cause, a presidential decree shall grant the surrender of the individual claimed, and shall order that he be arrested and delivered up to the English authorities.

20°. Le crime de *sédition parmi l'équipage d'un navire ;* dans le cas où des individus faisant partie de l'équipage d'un navire ou bâtiment de mer, se seraient emparés du dit bâtiment par fraude ou violence envers le capitaine ou commandant ; et aussi dans le cas où ils auraient livré le dit bâtiment ou navire à des pirates : crime prévu et puni en France par la Loi du 10 Avril 1825, et dans le Royaume Uni sous la dénomination de *piracy.*

Toutefois, l'extradition ne pourra être demandée par chacune des deux Parties Contractantes que dans les cas ci-après, savoir : par le Gouvernement Français, dans le cas où les actes cidessus énumérés seront en France réputés *crimes*, et punissables de peines afflictives ou infamantes ; et par le Gouvernement Britannique, dans les cas où les mêmes actes seront considérés comme *felonies*, et punissables de la peine de mort, ou de la transportation, ou de l'emprisonnement avec travail forcé. Il suffira à chaque Gouvernement, pour établir la légitimité de sa demande à cet égard, d'y joindre l'article ou les articles, la clause ou les clauses, de loi applicables au fait qui motivera l'extradition.

ARTICLE III.

De la part du Gouvernement Français, l'extradition aura lieu ainsi qu'il suit :

L'Ambassadeur ou autre Agent Diplomatique de Sa Majesté Britannique à Paris, joindra à l'appui de chaque demande d'extradition, l'expédition authentique et duement légalisée soit d'un certificat de condamnation, (*certificate of conviction,*) soit d'un mandat d'arrêt contre une personne accusée, (*warrant to apprehend a person indicted,*) ou d'un mandat d'arrêt contre une personne poursuivie, (*warrant to apprehend a person charged,*) faisant clairement connaître la nature du crime à raison duquel le fugitif est poursuivi. Le document judiciaire ainsi produit sera accompagné du signalement et des autres renseignemens pouvant servir à constater l'identité de l'individu réclamé.

M. le Garde des Sceaux, Ministre de la Justice, examinera la demande et les pièces à l'appui ; il en fera l'objet d'un rapport immédiat au Président de la République ; et, s'il y a lieu, un décret présidentiel accordera l'extradition de l'individu réclamé, et ordonnera qu'il soit arrêté et livré aux autorités Anglaises.

In consequence of such decree, the Minister of the Interior shall give orders that the individual claimed may be sought for, and when arrested, may be conducted to the frontier of France, in order to be there delivered to the person appointed to receive him on the part of the English Government.

If it should happen that the documents produced by the English Government in order to identify the person claimed, and the particulars collected by the agents of the French police for the same purpose, should prove insufficient, notice thereof shall immediately be given to the Ambassador or other Diplomatic Agent of her Britannic Majesty at Paris; and the individual claimed shall, if he is in custody, continue to be detained until the English Government shall be enabled to produce further proof of his identity.

Article IV.

On the part of the English Government, the surrender shall be made in the following manner:

The Ambassador or other Diplomatic Agent of France at London, shall produce to the Government of her Britannic Majesty either a sentence of conviction (*arrêt de condamnation*) or a warrant for apprehension, (*mandat d'arrêt*,) clearly setting forth the nature of the crime with which the fugitive is charged. Such document shall be accompanied by the description of the person convicted or accused, and by any other particulars which may serve to identify him.

The said document, when legalised by the Ambassador or other Diplomatic Agent of France at London, shall be considered as proof positive that the individual therein named has been convicted, or is lawfully accused, of having committed a crime cognisable by the French tribunals. Her Britannic Majesty's Secretary of State for the Home Department shall examine the judicial acts to be produced, as above provided, in the name of the French Government; and after having verified the authenticity of those documents, and ascertained that the crime therein specified is one of those described in the present Convention, he shall issue his warrant to a magistrate, in order to notify to him that the surrender of the person named in the documents produced has been regularly demanded by the French Government conformably to the Convention; and that in consequence such person is to be arrested, in whatever

En conséquence de ce décret, M. le Ministre de l'Intérieur donnera des ordres pour que l'individu poursuivi soit recherché, et, en cas d'arrestation, conduit jusqu'à la frontière de France, pour y être livré à la personne chargée de le recevoir de la part du Gouvernement Anglais.

S'il arrivait que les documens produits par le Gouvernement Anglais pour constater l'identité, et les renseignemens recueillis par les agens de la police Française pour le même objet, fussent reconnus insuffisans, avis en sera donné immédiatement à l'Ambassadeur ou autre Agent Diplomatique de Sa Majesté Britannique à Paris ; et l'individu poursuivi, s'il a été arrêté, continuera à être détenu, en attendant que le Gouvernement Anglais ait pu produire de nouveaux élémens de preuve pour constater son identité.

ARTICLE IV.

De la part du Gouvernement Anglais, l'extradition aura lieu de la manière suivante :

L'Ambassadeur ou autre Agent Diplomatique de France à Londres, produira au Gouvernement de Sa Majesté Britannique soit un arrêt de condamnation, soit un mandat d'arrêt, faisant clairement connaître la nature du crime à raison duquel le fugitif est poursuivi. A ce document seront joints le signalement du condamné ou du prévenu, et les autres renseignemens et indications pouvant servir à faire reconnaître son identité.

Le même document, revêtu de la légalisation de l'Ambassadeur ou autre Agent Diplomatique de France à Londres, sera considéré comme une preuve positive que l'individu qui s'y trouve nommé a été condamné, ou qu'il est légitimement poursuivi, comme ayant commis un crime justiciable des tribunaux Français. Le Secrétaire d'Etat de Sa Majesté Britannique pour le Ministère de l'Intérieur examinera les actes judiciaires produits, ainsi qu'il vient d'être dit, au nom du Gouvernement Français ; et après avoir vérifié l'authenticité de ces documens, et avoir reconnu que le crime qui s'y trouve spécifié est un de ceux prévus dans la présente Convention, il adressera son warrant à un magistrat pour lui notifier que l'extradition de la personne désignée dans les documens produits a été régulièrement demandée par le Gouvernement Français conformément à la Convention ; et qu'en conséquence

part of the United Kingdom he may have taken refuge, and delivered up to the French authorities.

On receipt of such warrant, the magistrate shall immediately issue his warrant directing the police to seek for and arrest such person, and to bring him before himself, or some other magistrate. The person who may be in consequence arrested by the police shall be brought before the magistrate; and the magistrate, after having satisfied himself as to the identity of the individual arrested, either by the confession or acquiescence of such individual, or by other sufficient proof, which may be either direct, or presumptive and circumstantial, shall order that such individual shall be conducted to the frontier of the United Kingdom, in order to be there delivered to the person appointed to receive him on the part of the French Government.

If, in those cases where there may be no direct proof, it should happen that after an attentive examination on the part of the magistrate, the circumstantial proof should be found insufficient, notice thereof shall immediately be given to the Ambassador or other Diplomatic Agent of France; and the individual claimed shall be detained in custody a sufficient time for the French Government to furnish to the Government of Her Britannic Majesty any further proof which it may be able to produce, in order to identify such individual.

Article V.

Any person claimed who may be detained in custody in either of the two countries, in conformity with the stipulations of the two preceding Articles, shall be set at liberty if, within one month after the day of his arrest, the Government which claims his surrender shall not have furnished the further evidence which it has been required to produce in proof his identity.

The period of such detention shall be lengthened to a reasonable extent, in case the individual who shall have taken refuge in one of the two countries shall have committed his crime in a colonial possession of the other, or in a country placed under its protectorate; and reciprocally, in case he shall have committed his crime in one of the two countries, and have taken refuge in a colonial possession of the other.

cette personne doit être arrêtée, quel que soit le lieu du Royaume Uni où elle se soit réfugiée, et remise aux autorités Françaises.

A la réception de ce warrant, le magistrat devra immédiatement délivrer son warrant ordonnant à la police de rechercher et d'arrêter cette personne, et de la conduire devant lui ou devant un autre magistrat. La personne qui sera arrêtée par la police en conséquence, sera amenée devant le magistrat ; et ce magistrat, après s'être assuré de l'indentité de l'individu arrêté, soit par le propre aveu ou l'acquiescement de cet individu, soit par d'autres preuves suffisantes, lesquelles pourront être ou directes, ou présomptives et circonstantielles, ordonnera que cet individu soit conduit à la frontière du Royaume Uni, pour y être livré à la personne chargée de le recevoir de la part du Gouvernement Français.

Dans les cas où il n'y aura pas de preuves directes, s'il arrivait qu'après un examen attentif de la part du magistrat, les preuves circonstantielles fussent reconnues insuffisantes, avis en sera donné immédiatement à l'Ambassadeur ou autre Agent Diplomatique de France ; et l'individu réclamé sera maintenu en arrestation pendant le temps nécessaire pour que le Gouvernement Français fournisse à celui de Sa Majesté Britannique les nouveaux élémens de preuve qui seraient en son pouvoir, à l'effet de constater du même individu.

Article V.

L'individu poursuivi que sera maintenu en arrestation dans l'un des deux pays contractans, conformément aux dispositions des deux Articles précédens, sera mis en liberté si, dans le mois à compter du jour de son arrestation, le Gouvernement réclamant l'extradition n'a pas fourni les nouveaux élémens de preuve qui lui auront été demandés à l'effet de constater l'identité.

La durée de cette détention sera augmentée dans une proportion raisonnable, dans le cas où l'individu réfugié dans l'un des deux pays aurait commis son crime dans une des possessions coloniales de l'autre, ou dans un des pays placés sous son protectorat ; et réciproquement, dans le cas où, ayant commis son crime dans l'un des deux pays, il se serait réfugié dans une des possessions coloniales de l'autre.

ARTICLE VI.

In any case where an individual convicted or accused in France of any of the crimes described in the present Convention, and who shall have taken refuge in the United Kingdom, shall have obtained naturalisation in England subsequently to his conviction or accusation, such naturalisation shall not prevent the search for, arrest, and surrender of such individual to the French authorities, in conformity with the said Convention.

In like manner the surrender shall take place on the part of France in any case where an individual accused or convicted in England of any of the same crimes, who shall have taken refuge in France, shall under the same circumstances have obtained naturalisation in France.

ARTICLE VII.

No accused or convicted person who may be surrendered, shall in any case be proceeded against or punished on account of any political offence committed prior to his being surrendered, nor for any crime or offence not described in the present Convention, which he may have committed previously to his being surrendered; and proof of having been so surrendered under this Convention shall be a good and valid defence against any proceeding on account of any political offence previously committed, and shall entitle the party to an immediate acquittal.

ARTICLE VIII.

The surrender shall not take place if, since the commission of the acts charged, the accusation, or the conviction, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the country where the accused shall have taken refuge.

ARTICLE IX.

If the individual claimed should be under prosecution, or in custody, for a crime or offence committed in the country where he may have taken refuge, his surrender may be deferred until he shall have suffered his punishment.

In case he should be proceeded against or detained in such country, on account of obligations contracted towards private individuals, his surrender shall nevertheless take place, the injured party retaining his right to prosecute his claims before the competent authority.

ARTICLE VI.

Dans le cas où un individu condamné ou accusé en France pour un des crimes prévus dans la présente Convention, et réfugié dans le Royaume Uni, serait parvenu à se faire naturaliser sujet Anglais postérieurement à la condamnation ou à l'accusation dont il est l'objet, cette naturalisation ne mettra aucun obstacle à ce que la recherche, l'arrestation, et la remise de cet individu aux autorités Françaises aient lieu conformément à la même Convention.

L'extradition aura lieu pareillement de la part de la France dans le cas où un individu poursuivi ou condamné en Angleterre pour un des mêmes crimes, et réfugié en France, aurait obtenu dans les mêmes circonstances la naturalisation Française.

ARTICLE VII.

Le prévenu ou le condamné dont l'extradition aura été accordée, ne pourra être dans aucun cas poursuivi ou puni pour aucun délit politique antérieur à l'extradition, ni pour aucun des crimes ou délits non prévus par la présente Convention, qu'il aurait commis antérieurement à l'extradition ; et la preuve qu'on a été extradé en vertu de la présente Convention sera considérée comme un moyen de défense bon et valable contre les poursuites qui seraient exercées en raison d'un délit politique antérieurement commis, et entraînera l'acquittement immédiat du prévenu.

ARTICLE VIII.

L'extradition ne pourra avoir lieu si, depuis les faits imputés, la poursuite, ou la condamnation, la prescription de l'action ou de la peine est acquise, d'après les lois du pays où le prévenu s'est réfugié.

ARTICLE IX.

Si l'individu réclamé est poursuivi ou se trouve détenu pour un crime ou délit qu'il a commis dans le pays où il s'est réfugié, son extradition pourra être différée jusqu'à ce qu'il ait subi sa peine.

Dans le cas où il serait poursuivi ou détenu dans le même pays, à raison d'obligations par lui contractées envers des particuliers, son extradition aura lieu néanmoins, sauf à la partie lésée à poursuivre ses droits devant l'autorité compétente.

ARTICLE X.

If the person accused or convicted should not be the subject of that one of the two States by which he is claimed, he shall not be surrendered until after the Government to which he belongs shall have been consulted, and have had sufficient opportunity to state any reasons which it may have for opposing the surrender. In every such case, the Government upon which the demand is made shall be free to take such decision as it may think fit, and to deliver up the accused to be tried either in his native country, or in the country where the crime shall have been committed.

If the individual claimed by one of the two Contracting Parties, in pursuance of the present Convention, should be also claimed by one or several other Powers, on account of other crimes committed upon their territory, his surrender shall, in preference, be granted in compliance with that demand which is earliest in date; unless any other arrangement should be made between the Governments which have claimed him, either on account of the gravity of the crimes committed, or for any other reasons.

ARTICLE XI.

Every article found in the possession of the individual claimed at the time of his arrest, shall be seized, in order to be delivered up with his person at the time when the surrender shall be made. Such delivery shall not be limited to the property or articles obtained by stealing or by fraudulent bankruptcy, but shall extend to everything that may serve as proof of the crime. It shall take place even when the surrender, after having been ordered, shall be prevented from taking place by reason of the escape or death of the individual claimed.

ARTICLE XII.

Each of the two Contracting Parties shall defray the expenses occasioned by the arrest within its territories, the detention, and the conveyance to its frontier, of the persons whom it may consent to surrender in pursuance of the present Convention.

ARTICLE XIII.

The stipulations of the present Convention shall be applicable as well to the respective colonial possessions of the two Contracting Parties, as to the countries placed under their protectorate. Article IX. of the Treaty of the

ARTICLE X.

Si le prévenu ou le condamné n'est pas sujet de celui des deux Etats qui le réclame, il ne pourra être livré qu'après que le Gouvernement auquel il appartient aura été consulté, et mis en demeure de faire connaître les motifs qu'il pourrait avoir de s'opposer à l'extradition. Dans tous les cas, le Gouvernement saisi de la demande restera libre d'y donner la suite qui lui paraîtra convenable, et de livrer le prévenu pour être jugé soit à son pays natal, soit au pays où le crime aura été commis.

Si l'individu réclamé par l'une des deux Parties Contractantes, aux termes de la présente Convention, se trouvait également réclamé par une ou plusieurs autres Puissances, à raison d'autres crimes commis sur leur territoire, son extradition sera préférablement accordée à la demande qui sera la première en date ; à moins qu'il n'en soit différemment disposé entre les Gouvernemens réclamans par des motifs tirés, soit du degré de gravité du crime, soit d'autres considérations.

ARTICLE XI.

Tous les objets trouvés en la possession de l'individu réclamé lors de son arrestation, seront saisis, pour être livrés avec sa personne au moment où s'effectuera l'extradition. Cette remise ne se bornera pas aux valeurs ou aux objets quelconques provenant de vol ou de banqueroute frauduleuse, mais elle comprendra tous ceux qui pourraient servir à la preuve du crime. De plus elle sera effectuée dans le cas même où l'extradition, ayant été ordonnée, ne pourrait avoir lieu néanmoins par suite de l'évasion ou de la mort de l'individu réclamé.

ARTICLE XII.

Chacune des deux Parties Contractantes supportera les frais occasionnés par l'arrestation sur son territoire, la détention, et le transport à sa frontière, des individus dont elle accordera l'extradition en vertu de la présente Convention.

ARTICLE XIII.

Les dispositions de la présente Convention sont applicables, tant aux possessions coloniales respectives des deux Parties Contractantes, qu'aux pays placés sous leur protectorat. Toutefois l'Article IX. du Traité du 7 Mars

7th of March 1815, shall, however, continue in force in regard to the respective possessions of the said Parties in the East Indies.

It is further agreed that any demands for surrender which may be made in pursuance of the present Article, may be disposed of by the respective Governors of the said possessions or countries; such Governors being, however, bound ultimately to report the affair to their respective Governments at home.

ARTICLE XIV.

The stipulations of the present Convention shall in no wise be applicable to crimes committed previously to the 13th of February 1843, the date of the former Convention concluded between the Contracting Parties.

ARTICLE XV.

Her Britannic Majesty engages to recommend to Parliament to pass an Act to enable her to carry into execution the arrangements of the present Convention. When such an Act shall have been passed, the Convention shall come into operation from and after a day to be then fixed upon by the two High Contracting Parties; and due notice shall be given beforehand by the Government of each country, of the day which may be so fixed upon.

The Convention shall continue in force until six months after either of the two Contracting Parties shall have given notice to the other of its intention to terminate its operation. Such notice, however, shall not be given before the 1st of January 1854.

ARTICLE XVI.

The present Convention shall be ratified, and the ratifications shall be exchanged at London as soon as may be within three weeks from the date of signature.

In witness whereof, the respective Plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

Done at London, the twenty-eighth day of May, in the year of our Lord one thousand eight hundred and fifty-two.

(L.S.) MALMESBURY.
(L.S.) A. WALEWSKI.

1815, continuera à être en vigueur en ce qui concerne les possessions respectives des dites Parties dans les Indes Orientales.

Il est de plus convenu que les demandes d'extradition qui seraient formées en exécution du présent Article, pourront être traitées entre les Gouverneurs respectifs des dites possessions ou des dits pays; sauf aux dits Gouverneurs à rendre ultérieurement compte de l'affaire aux Gouvernemens métropolitains respectifs.

ARTICLE XIV.

Les dispositions de la présente Convention ne seront en aucune manière applicables aux crimes commis antérieurement au 13 Février 1843, date de la Convention précédemment conclue entre les Parties Contractantes.

ARTICLE XV.

Sa Majesté Britannique s'engage à recommander au Parlement d'adopter une loi qui l'autorise à mettre en vigueur les dispositions de la présente Convention. Lorsque cette loi aura été adoptée, la Convention sera mise à exécution à partir d'un jour qui sera alors fixé par les deux Hautes Parties Contractantes; et dans chaque pays le Gouvernement fera dûment connaître d'avance le jour ainsi convenu.

La Convention ne cessera que six mois après que l'une des deux Parties Contractantes aura notifié à l'autre son intention d'y mettre fin, sans que cette dénonciation puisse avoir lieu néanmoins avant le 1er Janvier 1854.

ARTICLE XVI.

La présente Convention sera ratifiée, et les ratifications en seront échangées à Londres le plus tôt que faire se pourra dans le délai de trois semaines à compter du jour de la signature.

En foi de quoi, les Plénipotentiaires respectifs l'ont signée, et y ont apposé les cachets de leurs armes.

Fait à Londres, le vingt-huit Mai, l'an de grâce mil huit cent cinquante-deux.

(L.S.) MALMESBURY.
(L.S.) A. WALEWSKI.

MEMORANDUM RESPECTING CASES OF EXTRADITION OF BRITISH SUBJECTS FROM FRANCE BETWEEN THE YEARS 1852 AND 1865.

1. Case of James Howie, fraudulent bankrupt, whose extradition is applied for, October 8, 1852, but the French Government, though consenting to the extradition, does not succeed in finding him, as recorded in a despatch dated October 29, 1852.

2. Case of Alexander Heilbroun, accused of forgery, September 12, 1853. The French Government consents to the same, October 1, 1853.

3. Case of Harry Arthur Allen, accused of forgery, whose extradition was requested December 3, 1853. To this request no reply from the French Government is to be found.

4. Case of David Landrigan, an English deserter, June 15, 1854, whose extradition the French Government refused on the ground of desertion not being one of the crimes mentioned in the Treaty, June 30, 1854.

5. Case of Charles Healy, whose extradition is requested March 8, 1857, he being accused of fraudulent bankruptcy. The French Government consent to give him up, March 24, 1857, but the original request is withdrawn, owing to the fact of Healy's compounding with his creditors, April 24, 1857.

6. Case of Thomas Glass, whose extradition is requested, February 28, 1857, and granted March 30, 1857.

7. Case of Michael Clarke, whose extradition is asked for, June 22, 1859. The French Government reply that search will be made for him with a view to the above result, but a final despatch, dated August 22, 1859, states that no trace of him can be found.

8. Case of Baron de Vidil, whose extradition is requested, July 10, 1861, and refused, July 11, 1861, because he is a French subject.

9. Case of Francis James Leah, whose extradition is requested, September 12, 1865, but refused, September 14, 1865, because theft, the crime of which the above was accused, does not come within the scope of the Treaty.

25 & 26 VICT., CAP. LXX.

AN ACT FOR GIVING EFFECT TO A CONVENTION BETWEEN HER MAJESTY AND THE KING OF DENMARK FOR THE MUTUAL SURRENDER OF CRIMINALS.—*29th July* 1862.

WHEREAS a Convention between her Majesty and the King of *Denmark* for the mutual surrender of criminals, in the words and figures set forth in the schedule hereto, was signed at *London* on the fifteenth day of *April* one thousand eight hundred and sixty-two, and the ratifications thereof were exchanged at *London* on the twenty-seventh day of *May* one thousand eight hundred and sixty-two: And whereas it is expedient that provision should be made for carrying the said Convention into effect: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Definition of Magistrate.

1. The term "Magistrate" in this Act shall mean a justice of the peace or any other person or court in the United Kingdom, the *Channel Islands*, or any other part of her Majesty's dominions, having power to commit for trial persons accused of crimes against the law of that part of her Majesty's dominions in which any offender liable to be delivered up under this Act is found.

Certain Offenders to be Apprehended on Requisition of an Ambassador of the King of Denmark.

2. Where requisition has been made pursuant to the said Convention in the name of his Majesty the King of *Denmark* by his ambassador or other accredited diplomatic agent, to deliver up to justice any person, who, being accused or convicted of any crime for which such person is liable to be delivered up in pursuance of the said Convention, is found within the dominions of her Majesty, it shall be lawful for one of her Majesty's principal secretaries of state, by warrant under his hand and seal, to signify that such requisition has been made, and to require all magistrates within their several jurisdictions to govern themselves accordingly, and to aid in apprehending the person so accused or convicted, herein-after referred to as the

fugitive, and in committing him to gaol for the purpose of his being delivered up to justice according to the provisions of the said Convention :

Upon the issue of any such warrant as aforesaid, it shall be lawful for any magistrate acting within the limits of his jurisdiction, to issue his warrant for the apprehension of the said fugitive, and to commit him to gaol, there to remain until delivered up pursuant to such requisition as aforesaid ; provided that the following conditions are complied with before the warrant is issued by the magistrate.

Firstly, That in the case of a fugitive accused of crime it is proved to the satisfaction of the magistrate, upon oath or by affidavit, that the party applying to him for a warrant is the bearer of a warrant of arrest or other equivalent judicial document for the arrest of the said fugitive issued by a judge or magistrate duly authorised to take cognisance of the acts charged against the fugitive in *Denmark*, and clearly setting forth, in the opinion of the magistrate to whom the application for a warrant under this Act is made, the acts in respect of which the original warrant was issued :

Secondly, That in the case of a person accused such evidence is produced to the magistrate as, according to the laws of the part of her Majesty's dominions in which the magistrate is acting, would in his opinion justify the apprehension and committal for trial of the fugitive if the crime of which he is accused had been there committed, with this qualification, that depositions or statements on oath, certified under the hand of the magistrate by whom the original warrant was issued and attested by the oath of the party producing them to be the original depositions or statements, or true copies thereof, may be received in evidence of the criminality of the fugitive apprehended :

Thirdly, That in the case of a fugitive convicted of crime an authenticated copy of the conviction is produced, and proof of the identity of the person convicted is given to the satisfaction of the magistrate :

Where any person liable to be delivered up in pursuance of the said Convention is found in *Ireland*, a warrant under the hand of the Chief Secretary or of the Lord-Lieutenant of *Ireland* shall for the purposes of this Act be equivalent to a warrant of one of her Majesty's principal secretaries of state :

A magistrate may administer an oath for any of the purposes of this Act :

The warrant of any police magistrate of the metropolis

issued in pursuance of this Act may be executed in any part of *England* in the same manner as if the same had been originally issued or subsequently endorsed by a justice of the peace having jurisdiction in the place where the same is executed.

Provision as to Colonies.

3. Where any such fugitive as aforesaid has fled from a colony or possession of the King of *Denmark* and is found in a colony or possession of her Majesty, the requisition herein-before required to be made in the name of his Majesty, the King of *Denmark*, by his ambassador or other accredited agent, may be made directly by the governor of the first-mentioned colony or possession to the governor of the other colony or possession, subject to this proviso, that the governor upon whom the requisition may be made shall be at liberty either to grant the surrender or to refer the matter to his government, and any warrant issued by the governor upon whom such requisition is made shall have in such colony or possession the same effect as a warrant issued in pursuance of this Act by one of her Majesty's principal secretaries of state has in *England*.

Offenders to be delivered up.

4. It shall be lawful for one of her Majesty's principal secretaries of state, or in the case of any person committed in *Ireland* for the Chief Secretary of the Lord-Lieutenant of *Ireland*, and in the case of any person committed in any of her Majesty's colonies or possessions abroad for the officer administering the government of any such colony or possession, by warrant under his hand and seal to order any fugitive committed in pursuance of this Act to be delivered up to such person or persons as may be duly authorised in the name of the said King of *Denmark* to receive the person so committed, and convey him to the dominions of the King of *Denmark*, and such fugitive shall be delivered up accordingly; and it shall be lawful for the person or persons authorised as aforesaid to receive, hold in custody, and take to the dominions of the King of *Denmark* the fugitive so delivered to him; and if the said fugitive escape out of any custody to which he may be delivered as aforesaid, it shall be lawful to retake him, in the same manner as any person accused of any crime against the laws of that part of her Majesty's dominions to which he escapes may be retaken upon an escape.

After two months the persons apprehended may be discharged, if not conveyed out of her Majesty's dominions.

5. Where any fugitive who has been committed under this Act, to remain until delivered up pursuant to requisition as aforesaid, is not delivered up pursuant thereto, and conveyed out of her Majesty's dominions, within two calendar months after such committal, it shall be lawful for any of her Majesty's judges in that part of her Majesty's dominions in which such fugitive is in custody, upon application made to him by or on behalf of the person so committed, and upon proof that reasonable notice of the intention to make such application has been given to some or one of her Majesty's principal secretaries of state in *Great Britain*, or in *Ireland* to the Chief Secretary of the Lord-Lieutenant of *Ireland*, and in any of her Majesty's colonies or possessions abroad to the officer administering the government of any such colony or possession, to order the person so committed to be discharged out of custody, unless sufficient cause is shown to such judge why the prisoner should not be discharged.

Limits of Act.

6. If, by any law or ordinance to be hereafter made by the local legislature of any *British* colony or possession abroad, provision may be made for carrying into complete effect within such colony or possession the objects of this Act by the substitution of some other enactment in lieu thereof, it shall be competent to her Majesty, with the advice of her Privy Council, (if to her Majesty in Council it seem meet, but not otherwise,) to suspend the operation within any such colony or possession of this Act so long as such substituted enactment continues in force there, and no longer.

Continuance of Act.

7. This Act shall continue in force during the continuance of the said Convention.

SCHEDULE.

Convention between her Majesty and the King of Denmark, for the mutual surrender of criminals. Signed at London, April 15, 1862. *Ratifications exchanged at London, May* 27, 1862.

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and his Majesty the King of

Denmark, having judged it expedient, with a view to the better administration of justice, and to the prevention of crime within their respective territories and jurisdictions, that persons charged with or convicted of the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up; their said Majesties having named as their plenipotentiaries to conclude a Convention for this purpose; that is to say,

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honourable John Earl Russell, Viscount Amberley of Amberley and Ardsalla, a peer of the United Kingdom, a member of her Majesty's Most Honourable Privy Council, her principal Secretary of State for Foreign Affairs;

And his Majesty the King of Denmark, M. Torben de Bille, his chamberlain, Commander of the Order of Danebrog, and decorated with the cross of honour of the same order, his envoy extraordinary and minister plenipotentiary to her Britannic Majesty;

Who after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following articles:

ARTICLE I.

It is agreed that the high contracting parties shall, on requisition made in their name through the medium of their respective diplomatic agents, deliver up to justice persons who, being accused or convicted of murder, (comprehending the crimes of assassination, parricide, infanticide, and poisoning,) or attempt to commit murder, or of forgery, (comprehending the counterfeiting of bank-notes, or public securities, or money,) or of fraudulent bankruptcy, committed within the jurisdiction of the requiring party, shall be found within the territories of the other, provided that such persons are not subjects of the party upon which the requisition is made. Provided also, that in the case of a person accused, the surrender shall be made only when the commission of the crime shall be so established as that the laws of the country where the fugitive or person so accused shall be found would justify his apprehension and commitment for trial if the crime had been there committed, and in the case of a person convicted, the surrender shall be made only on the production of an authenticated copy of his conviction and on proof of his identity.

Consequently, on the part of the Danish government, the surrender shall be made only by the consent of the minister to whose department appertains the administration of justice, and after the production, in the case of a person accused, of a warrant of arrest or other equivalent judicial document issued by a judge or other competent authority in the United Kingdom, clearly setting forth the acts for which the fugitive shall have rendered himself accountable, or in the case of a person convicted, on the production of an authenticated copy of his conviction and on proof of his identity.

On the part of the British government, the surrender in the case of a person accused shall be made only on the warrant or other equivalent judicial document for the arrest of a fugitive issued by a judge or magistrate duly authorised to take cognisance of the acts charged against the fugitive in Denmark, and on duly authenticated depositions or statements on oath before such judge or magistrate, clearly setting forth the said acts, or on such other evidence thereof as, according to the laws of England, would warrant the apprehension of the said fugitive and his committal for trial for the said acts, if they had been therein committed, or in the case of a person convicted, on the production of an authenticated copy of his conviction and on proof of his identity.

Article II.

In the case of the person accused or convicted of any of the crimes mentioned in the preceding article, who may have fled from a colony or possession of one of the high contracting parties and be found in a colony or possession of the other, the surrender shall be made, subject always to the conditions prescribed in the preceding article, on a requisition addressed by the governor of the one colony directly to the governor of the other. The governor upon whom the requisition is made shall be at liberty either to grant the surrender or to refer the matter to his government.

Article III.

The expenses of any detention and surrender made in virtue of the preceding articles shall be borne and defrayed by the government in whose name the requisition shall have been made.

ARTICLE IV.

The present Convention shall come into operation as soon as the necessary legislative Acts shall have been passed. Either of the high contracting parties shall be at liberty to give notice to the other at any time for its termination; and in such case it shall altogether cease and determine at the expiration of six months from the date of such notice.

ARTICLE V.

The present Convention shall be ratified, and the ratifications shall be exchanged at London in one month, or sooner if possible.

In witness whereof, the respective plenipotentiaries have signed the present Convention, and have affixed thereto the seal of their arms.

Done at London the fifteenth day of April, in the year of our Lord one thousand eight hundred and sixty-two.

(L.S.) RUSSELL.
(L.S.) TORBEN BILLE.

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29 & 30 VICT., CAP. CXXI.

AN ACT FOR THE AMENDMENT OF THE LAW RELATING TO TREATIES OF EXTRADITION.—10*th August* 1866.

WHEREAS difficulties have been experienced in carrying into execution treaties for the extradition of persons accused of crimes between her Majesty and the sovereigns or governments of certain foreign states: And whereas the statutes now in force for this purpose have been found insufficient: And whereas it is expedient to amend the same, and to give greater facilities than at present exist under the aforesaid statutes for the admission in evidence of judicial or official documents or copies of documents: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Warrants of Arrest and Copies of Depositions to be received in Evidence if authenticated in manner specified by this Act.

1. That warrants of arrest and copies of depositions signed or taken by or before a judge or competent magistrate in any foreign state with which her Majesty may

have entered into, or may hereafter enter into, any treaty for the extradition of fugitive offenders or persons accused of crimes, shall henceforth be received in evidence if authenticated in the manner following, that is to say, if the warrant of arrest purports to be signed by a judge or other competent magistrate of the country in which the same shall have been issued, and if the copies of depositions purport to be certified under the hand of such judge or magistrate to be true copies of the original depositions, and if the signature of the judge or magistrate in each case shall be authenticated in the manner usual in the respective states or countries by the proper officer of the department of the minister of justice, and sealed with the official seal of such minister; and all courts of justice and magistrates in her Majesty's dominions shall take judicial notice of such official seal, and shall admit the documents so authenticated by it to be received in evidence without further proof.

This Act to be construed with 8 & 9 *Vict., c.* 113, *and* 14 & 15 *Vict., c.* 99.

2. This Act shall be construed with an Act passed in the eighth and ninth years of the reign of her Majesty, chapter one hundred and thirteen, intituled, "An Act to facilitate the Admission in Evidence of Official and other Documents," and also with an Act passed in the fourteenth and fifteenth years of the reign of her Majesty, chapter ninety-nine, intituled, "An Act to amend the Law of Evidence."

Duration of Act.

3. The duration of this Act shall be limited to the first day of September one thousand eight hundred and sixty-seven.

CANADA.

The Lamirande Extradition Case.

A complete account of this will be found in the following judgment delivered by Mr Justice Drummond:—"On the 26th July last (1866) a document under the signature of his Excellency the Governor-General, purporting to be a warrant for the extradition of the petitioner, issued under the authority vested in his Excellency by the provisions of 6 and 7 Vict., intituled 'An Act to give effect to a Con-

vention between her Majesty and the King of the French for the apprehension of certain offenders,' setting forth that the said petitioner stood accused of the crime of 'forgery by having in his capacity of cashier of the Bank of France at Poitiers, made false entries in the books of the said bank, and thereby defrauded the said bank of the sum of seven hundred thousand francs;' that a requisition had been made to his Excellency by the Consul-General of France in the province of British North America to issue his warrant for the arrest of the said prisoner, and requiring all the justices of the peace and other magistrates and officers of justice within their several jurisdictions to aid in apprehending the petitioner and committing him to jail. Under this document the prisoner was arrested, and after examination before William H. Brehaut, Esq., police magistrate and justice of the peace, was fully committed to the common jail of this district on the 22d day of the current month of August. On the following day, between the hours of eleven and twelve o'clock in the forenoon, notice was given in due form by the prisoner's counsel to the counsel charged with the criminal prosecutions in this district, that he (the counsel for the prisoner) would present a petition to any one of the judges of the Court of Queen's Bench who might be present in chambers at one o'clock in the afternoon of the following day, (the 24th,) praying for a writ of habeas corpus and the discharge of the prisoner. At the time appointed this petition was submitted to me. Mr J. Doutre appeared for the petitioner, Mr T. K. Ramsay for the Crown, and Mr Pominville for the private prosecutor. A preliminary objection, raised on the ground of insufficient notice, was overruled. Mr Doutre then set forth his client's case in a manner so lucid that I soon convinced myself, after perusing the statute cited in the warrant of extradition, that the warrant itself, the pretended warrant of arrest alleged to have been issued in France—*arrêt de renvoi*—and all the proceedings taken with a view to obtain the extradition of the petitioner were unauthorised by the above cited statute, illegal, null and void, and that the petitioner was therefore entitled to his discharge from imprisonment. But as Mr Pominville, whom I supposed to be acting as counsel for the Bank of France, wished to be heard, I adjourned the discussion of the case until the following morning. I would have issued the writ before adjourning had the counsel for the prisoner insisted upon it. But that gentleman was no doubt lulled into a sense of false security by the

indignation displayed by the counsel for the Crown when Mr Doutre signified to me his apprehension that a *coup de main* was in contemplation to carry off the petitioner before his case had been decided. On the following morning, Saturday, the 25th of this month, I ordered the issuing of a writ of habeas corpus to bring the petitioner before me with a view to his immediate discharge. My determination to discharge him was founded upon the reasons following:—1. Because it is provided by the 1st section of the Act of the British Parliament to give effect to a Convention between her Majesty and the King of the French for the apprehension of certain offenders, (6 and 7 Vict., c. 75,) that every requisition to deliver up to justice any fugitive accused of any of the crimes enumerated in the said Act shall be made by an ambassador of the government of France or by an accredited diplomatic agent, whereas the requisition made to deliver up the petitioner to justice has been made by Abel Frederic Gautier, Consul-General of France in the provinces of British North America, who is neither an ambassador of the government of France nor an accredited diplomatic agent of that government, according to his own avowal upon oath. 2. Because, by the 3d section of the said statute it is provided that no justice of the peace, or any other person, shall issue his warrant for any such supposed offender until it shall have been proved to him upon oath or affidavit that the person applying for such warrant is the bearer of a warrant of arrest or other equivalent judicial document, issued by a judge or competent magistrate in France, authenticated in such manner as would justify the arrest of the supposed offender in France upon the same charge, or unless it shall appear to him that the act charged against the supposed offender is clearly set forth in such warrant of arrest or other judicial document; whereas the justice of the peace who issued his warrant against the petitioner issued the same without having any such proof before him, the only document produced before him, as well as before me, in lieu of such warrant of arrest or other equivalent judicial documents being a paper writing alleged to be a translation into English of a French document made by some unknown or unauthorised person in the office of the counsel for the prosecutor at New York, and bearing no authenticity whatever. 3. Because, supposing the said document purporting to be a translation of an *acte d'accusation* or indictment accompanied by a pretended warrant for arrest, and designated as an *arrêt de renvoi*, to be authentic, it does not contain

the designation of any crime comprised in the number of the various crimes for, or by reason of the alleged commission of which any fugitive can be extradited under the said statute. 4. Because by the 1st section of the said Act it is provided that no justice of the peace shall commit any person accused of any of the crimes mentioned in the said Act (to wit, murder, attempt to commit murder, forgery, and fraudulent bankruptcy) unless upon such evidence as according to the laws of that part of her Majesty's dominions in which the supposed offender shall be found would justify the apprehension and committal for trial of the person so accused, if the crime of which he shall be accused had been there committed; whereas the evidence produced against the petitioner upon the accusation of forgery brought against him before the committing magistrate would not have justified him in apprehending or committing the petitioner for the crime of forgery had the acts charged against him been committed in that part of her Majesty's dominions where the petitioner was found—to wit, in Lower Canada. 5. Because the said warrant for the extradition of the petitioner, as well as the warrant for his apprehension, does not charge him with the commission of any one of the crimes for which a warrant of extradition can be issued under the said statute; inasmuch as in both of the said warrants the alleged offence is charged against the petitioner as 'forgery by having in the capacity of cashier of the branch of the Bank of France at Poitiers made false entries in the books of the bank, and thereby defrauded the said bank of the sum of seven hundred thousand francs.' Whereas the said offence as thus designated does not constitute the crime of forgery according to the laws of England and Lower Canada, for, to use the words of Judge Blackburn when he pronounced judgment concurrently with Chief-Justice Cockburn and Judge Shee, in a case analogous to this, (*Ex parte Charles Windsor*, Court of Queen's Bench, May 1865, 13 W.R. 655,) 'Forgery is the false making of an instrument purporting to be that which it is not; it is not the making of an instrument purporting to be that which it is; it is not the making of an instrument which purports to be what it really is, but which contains false statements. Telling a lie does not become a forgery because it is reduced to writing.' The gaoler's return to this writ of habeas corpus was that he had delivered over the prisoner to Edme Justin Melin, Inspecteur Principal de Police de Paris, on the night of the 24th instant, at twelve o'clock, by virtue of an order signed

by M. H. Sanborn, Deputy-Sheriff, grounded upon an instrument signed by his Excellency the Governor-General. It appears that the petitioner thus delivered up to this French policeman is now on his way to France, although his extradition was illegally demanded, and although he was accused of no crime under which he could have been legally extradited; and although, as I am credibly informed, his Excellency the Governor-General had promised, as he was bound in honour and justice, to grant him an opportunity of having his case decided by the first tribunal of the land before ordering his extradition. It is evident that his Excellency has been taken by surprise, for the document signed by him is a false record, purporting to have been signed on the 23d instant at Ottawa, while his excellency was at Quebec, and falsely certified to have been recorded at Ottawa before it had been signed by the Governor-General. In so far as the petitioner is concerned, I have no further order to make, for he who was to have been brought before me is now probably on the high seas, swept away by one of the most audacious and hitherto successful attempts to frustrate the ends of justice which has yet been heard of in Canada. The only action I can take, in so far as he is concerned, is to order that a copy of this judgment be transmitted by the Clerk of the Crown to the Governor-General, for the adoption of such measures as his Excellency may be advised to take to maintain that respect which is due to the courts of Canada and to the laws of England. As to the public officers who have been connected with this matter, if any proceedings are to be adopted against them they will be informed thereof on Monday the 24th day of September next, in the Court of Queen's Bench, holding criminal jurisdiction, to which day I adjourn this case for further consideration."

ENGLISH TEXT OF CONVENTION BETWEEN HER MAJESTY AND THE KING OF PRUSSIA FOR THE MUTUAL SURRENDER OF CRIMINALS.—*Signed at London, March 5, 1864.*

[Ratifications exchanged at London, April 11, 1864.]

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, and His Majesty the King of Prussia, having judged it expedient, with a view to the better administration of justice, and to the prevention of crime

within their respective territories and jurisdictions, that persons charged with or convicted of the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up; their said Majesties have named as their Plenipotentiaries to conclude a Convention for this purpose, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honourable John Earl Russell, Viscount Amberley of Amberley and Ardsalla, a Peer of the United Kingdom, Knight of the Most Noble Order of the Garter, a Member of Her Majesty's Most Honourable Privy Council, Her Principal Secretary of State for Foreign Affairs:

And His Majesty the King of Prussia, His Excellency the Minister of State, Albert Count of Bernstorff-Stintenburg, Grand Cross of the Order of the Red Eagle with oak leaves, and Grand Commander of the Royal Order of the House of Hohenzollern in diamonds, &c., &c., His Ambassador Extraordinary and Plenipotentiary to Her Britannic Majesty;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles:—

Article I.

It is agreed that the High Contracting Parties shall, on requisition made in their name through the medium of their respective Diplomatic Agents, deliver up to justice persons who, being accused or convicted of any of the following crimes, namely:

1. Murder, comprehending the crimes of assassination, parricide, infanticide, and poisoning;
2. Attempt to commit murder;
3. Forgery, comprehending the counterfeiting of bank-notes, or public securities, or money;
4. Fraudulent bankruptcy;
5. Burglary, (*Nächtlicher Einbruch und Eindringen in ein Wohnhaus oder dazu gehöriges Nebengebäude mit der Absicht ein Verbrechen zu begehen;*)
6. Robbery with violence to the person robbed;
7. Larceny or embezzlement by clerks and servants, (*Diebstahl oder Unterschlagung durch öffentliche oder Privat-Beamte, Geschäftsgehülfen und Gesinde;*)

committed within the jurisdiction of the requiring Party, shall be found within the territories of the other, provided

that such persons are not subjects of the Party upon whom the requisition is made. Provided also, that in the case of a person accused, the surrender shall be made only when the commission of the crime shall be so established, as that the laws of the country where the fugitive or person so accused shall be found would justify his apprehension and commitment for trial, if the crime had been there committed ; and that in the case of a person convicted, the surrender shall be made only on the production of an authenticated copy of his conviction, and on proof of his identity.

Consequently, on the part of the Prussian Government, the surrender shall be made only by the consent of the Minister to whose Department appertains the administration of justice, and after the production, in the case of a person accused, of a warrant of arrest or other equivalent judicial document, issued by a Judge or other competent authority in the United Kingdom, clearly setting forth the acts for which the fugitive shall have rendered himself accountable ; or, in the case of a person convicted, on the production of an authenticated copy of his conviction, and on proof of his identity.

On the part of the British Government, the surrender, in the case of a person accused, shall be made only on the warrant or other equivalent judicial document for the arrest of a fugitive, issued by a Judge or Magistrate duly authorised to take cognisance of the acts charged against the fugitive in Prussia, and on duly authenticated depositions or statements on oath before such Judge or Magistrate, clearly setting forth the said acts, or on such other evidence thereof as, according to the laws of England, would warrant the apprehension of the said fugitive, and his committal for trial for the said acts, if they had been therein committed ; or, in the case of a person convicted, on the production of an authenticated copy of his conviction, and on proof of his identity.

ARTICLE II.

The expenses of any detention and surrender made in virtue of the preceding Article shall be borne and defrayed by the Government in whose name the requisition shall have been made.

ARTICLE III.

The present Convention shall come into operation as soon as the necessary Legislative Acts shall have been

passed. Either of the High Contracting Parties shall be at liberty to give notice to the other at any time for its termination; and in such case it shall altogether cease and determine at the expiration of six months from the date of such notice.

ARTICLE IV.

The present Convention shall be ratified, and the ratifications shall be exchanged at London in one month, or sooner if possible.

In witness whereof, the respective Plenipotentiaries have signed the present Convention, and have affixed thereto the seal of their arms.

Done at London, the fifth day of March, in the year of our Lord one thousand eight hundred and sixty-four.

(L.S.) RUSSELL.
(L.S.) BERNSTORFF.

RECENT ENGLISH CASE.—CHARLES DUBOIS, (OTHERWISE COPPIN.)

The following excellent Report is taken from the JURIST *of Nov.* 10, 1866, vol. xii., N.S., p. 867 :—

COURT OF CHANCERY.

Re DUBOIS, otherwise COPPIN.—*Nov.* 2 *and* 3.

French Extradition Act (6 *and* 7 *Vict., c.* 75)—*Extradition Acts Amendment Act* (29 *and* 30 *Vict., c.* 121)—*Evidence—"Accused" person—Condemnation "par contumace"—Forgery—Uttering.*

In proceedings under the French Extradition Acts it is not necessary that copies of depositions should be authenticated in the mode required by law at the time they were taken, provided that they are authenticated as so required at the time of their production.

The provisions of the 3*d section of the* 6 *and* 7 *Vict., c.* 75, *with regard to the proof of copies of depositions, is permissive only, and such provisions do not, nor do the provisions of the* 29 *and* 30 *Vict., c.* 121, *with regard to the proof of such copies, apply to the proof of original depositions, which are of themselves evidence if properly authenticated.*

If the original warrant for the arrest of the accused person only requires a seal to justify his arrest according to the French law, such warrant will be sufficient within the Extradition Acts without signature.

A person accused of forgery in France in 1862 *was committed for rendition under the Extradition Acts upon the production of an arrêt de mise en accusation, dated the* 1st *May* 1863, *accusing him of forgery, and authenticated by the seals of the Cour Impériale de Paris, and of the Minister of Justice; and upon production of the original depositions taken in* 1862 *and* 1863, *authenticated by the seals of the Minister of Justice and the Minister of Foreign Affairs in France.*

A person condemned "par contumace" in France is still an "accused" person within the meaning of the Extradition Acts, and, as such, liable to rendition.

Semble, the word "forgery" in the Extradition Act, includes knowingly uttering a forged document.

This was the return of a writ of habeas corpus, granted by Lord Chelmsford, L.C., at his private residence, on the 25th September, directing the governor of the House of Detention to bring up the body of Charles Dubois, otherwise Paul Charles Emile Coppin, to perform and abide such order as the Court should make in that behalf.

Early in July last a requisition was made by the French Government to her Majesty's Secretary of State for the Home Department, for the extradition, in pursuance of the Convention of 1843, and of the Act of the 6 and 7 Vict., c. 75, for giving effect thereto, of the above-mentioned Dubois, otherwise Coppin, a French subject who had taken refuge in England, and was accused of having committed, within French territory, the crime of forgery, "the same being a crime rendering him liable to be so delivered up under the said Act."

Upon this requisition a warrant was granted for the apprehension of Coppin. He was arrested on the 7th September, and was shortly afterwards brought up for examination before Mr Vaughan, the magistrate at Bow Street.

The case upon which the charge of forgery against the prisoner was mainly rested was that of having uttered to one Colson, in France, a bill of exchange for the sum of 5000 francs, bearing date the 25th November 1861, and purporting to be drawn to the order of one Drouet, a farmer at Tiffinds, in the department of Yonne, by one Poisson, a sheep dealer of the same place, he well knowing the same to be forged.

In support of this charge were produced a copy of the "Arrêt de mise en accusation," a lengthy document headed, "Arrêt qui renvoie Coppin (absent) aux assises de l'Yonne," containing various charges against the prisoner, including that of forgery, and authenticated by the signa-

ture of M. Fauche, greffier of the Cour Imperiale de Paris, and by the seals of the Cour Imperiale de Paris, and of the Minister of Justice ; and also the original depositions of Drouet, Poisson, and Colson, authenticated by the seals of the Minister of Justice and the Minister for Foreign Affairs. These depositions established the facts that the signatures of Drouet and Poisson were forged, and that the bill had been uttered by the prisoner to Colson.

A copy of a letter, dated the 5th February 1862, addressed to the Judge of Instruction, certified under the seal of the Minister of Justice, was also produced, and shown to a witness, who stated it to be in the hand-writing of the prisoner. In this letter the prisoner admitted himself to be guilty of the forgeries laid to his charge, and expressed his intention to furnish the judge with a complete list of them. This letter, together with the further evidence adduced, is more particularly alluded to in the arguments of counsel, and the judgment of the Lord Chancellor.

Several objections, the nature of which will hereinafter appear, were taken to the nature of this evidence, and to the manner in which it was authenticated. They were, however, overruled by the learned magistrate, who, on the 13th September, committed the prisoner to the House of Detention.

An application for a writ of habeas corpus was subsequently made to Mr Justice Lush, the vacation judge at chambers, which was refused, upon the ground, that in the absence of the depositions upon which the magistrate acted, there was nothing to prove to the Court that there was "probable cause" for believing Coppin to be unlawfully detained in custody. As the magistrate at Bow Street declared himself to have no lawful authority to grant copies of the depositions, and Mr Justice Lush declined to act in the absence of those documents, the Government permitted a delay in the delivery of the prisoner ; and an application was made on the 25th September, to Lord Chelmsford, L.C., by Mr Edward Clarke, of the common-law bar, for a writ of habeas corpus. His lordship considered that the case should be made the subject of public argument and judicial decision, and granted a writ, to be made returnable before himself at Westminster, on the first day of November term. His lordship added, that, in his opinion, the magistrate was right in refusing to furnish copies of the depositions, upon the mere statement that it was intended to apply to a higher court for

a writ of habeas corpus ; and that, in fact, the magistrate had no power to give such copies under such circumstances, the proper time for their production being on the return of the writ.

The French Extradition Act, 6 and 7 Vict., c. 75, which carried into effect the Convention of 1843, enacts that on requisition made by the French Government to deliver up any person "who, being accused of having committed" certain crimes, amongst which is that of forgery, within French territory, shall be found within her Majesty's dominions, it shall be lawful for the magistrate "to examine upon oath any person or persons touching the truth of such charge ; and upon such evidence as, according to the laws of that part of her Majesty's dominions, would justify the apprehension and committal for trial of the person so accused, if the crime of which he or she shall be so accused had been there committed, it shall be lawful for the justice of the peace or other person, having power to commit as aforesaid, to issue his warrant for the apprehension of such person, and also to commit the person so accused to gaol, there to remain until delivered, pursuant to such requisition as aforesaid." The 2d section then provides, "that in every such case copies of the depositions upon which the original warrant was granted, certified under the hand of the person or persons issuing such warrant, and attested upon the oath of the party producing them to be true copies of the original depositions, may be received in evidence of the criminality of the person apprehended." And by the 3d section it is provided, "that no justice of the peace or other person shall issue his warrant for the apprehension of any such supposed offender, until it shall have been proved to him upon oath or by affidavit, that the party applying for such warrant is the bearer of a warrant of arrest, or other equivalent judicial document, issued by a judge or competent magistrate in France, authenticated in such manner as would justify the arrest of the supposed offender in France upon the same charge, or unless it shall appear to him that the acts charged against the supposed offender are clearly set forth in such warrant of arrest, or other equivalent judicial document."

Apparently the mode thus provided for making out charges was attended with difficulty, for it was stated at the bar, that during more than twenty years there had been only one instance of the rendition of an accused person ; and in the course of last session an Act was passed to simplify the process.

This Act, the 29 and 30 Vict., c. 121, which received the royal assent on the 10th August 1866, recites, that "whereas difficulties have been experienced in carrying into execution treaties for the extradition of persons accused of crimes between her Majesty and the Sovereigns or Governments of certain foreign States: and whereas the statutes now in force for this purpose have been found insufficient: and whereas it is expedient to amend the same, and to give greater facilities than at present exist under the aforesaid statutes for the admission in evidence of judicial or official documents or copies of documents;" and then it proceeds to enact, "that warrants of arrest and copies of depositions, signed or taken by or before a judge or competent magistrate in any foreign State with which her Majesty may have entered into, or may hereafter enter into, any treaty for the extradition of fugitive offenders or persons accused of crimes, shall henceforth be received in evidence if authenticated in the manner following, that is to say, if the warrant of arrest purports to be signed by a judge or other competent magistrate of the country in which the same shall have been issued, and if the copies of depositions purport to be certified under the hand of such judge or magistrate to be true copies of the original depositions, and if the signature of the judge or magistrate in each case shall be authenticated in the manner usual in the respective states or countries by the proper officer of the department of the Minister of Justice, and sealed with the official seal of such minister; and all courts of justice and magistrates in her Majesty's dominions shall take judicial notice of such official seal, and shall admit the documents so authenticated by it to be received in evidence without further proof."

This Act is, by sec. 2, to be construed with the 8 and 9 Vict., c. 113, (Admission of Evidence Act,) and the 14 and 15 Vict., c. 99, (Amendment of the Law of Evidence Act.)

In the present case, however, instead of relying upon the mode of authentication specified by this Act, the original documents were produced.

Edward Clarke, for the prisoner.—The order for committal was bad, and the prisoner is entitled to be discharged from custody. First, because the requirements of the Extradition Acts, with regard to the evidence upon which an offender is to be delivered up, were not complied with. The depositions used against the prisoner upon his examination at Bow Street, although dated in 1862 and 1863, at a time when the mode of authentication of such docu-

ments was regulated by the provisions of the 6 and 7 Vict., c. 75, purport to be authenticated in the manner prescribed by the late Act of the 29 and 30 Vict., c. 121, which received the royal assent on the 10th August last.

[Lord CHELMSFORD, L. C., overruled this objection, on the ground that it was immaterial when the depositions were made, if they were authenticated in the manner required by law at the time of their production.]

Secondly, the evidence produced before the magistrate at Bow Street, and upon which his committal of the prisoner was founded, does not satisfy the requirements of the 6 and 7 Vict., c. 75. That Act provides (sec. 2) that "copies of the depositions upon which the original warrant was granted, certified under the hand of the person or persons issuing such warrant," are to be received as evidence; and it is provided by the same Act, (sec. 3,) that no magistrate shall issue a warrant for the apprehension of a supposed offender unless it shall be proved to him that the party applying for such warrant is the bearer of a "warrant of arrest, or other equivalent judicial document, signed by a judge or other competent magistrate in France." In this case no warrant whatever had been produced, and the "other judicial document" intended to supply the place of such warrant, was, in fact, only a copy of an act of mise en accusation, bearing no original magisterial signature, and being, in fact, authenticated only by the signature of M. Fauche, the "greffier," or clerk, of the Cour Imperiale de Paris. The depositions produced were not copies, but originals, and were not certified as the Act required; those of Drouet, Poisson, and Colson being only authenticated by official seals of the Minister of Justice and the Minister of Foreign Affairs.

Thirdly, the prisoner was charged with "forgery," which crime is one of those named in the convention of 1843, and in the statute of the 6 and 7 Vict., c. 75, but no evidence was given to show that he had committed forgery, but only that he uttered a forged document—a totally distinct crime, and one not mentioned in the Act. Evidence of the one offence is no evidence of the other, and there is no precedent for finding a man guilty of uttering, on a charge of forgery, or *vice versâ*. (East's Pleas of the Crown, 853; 2 Russ., 710, note; 2 Leach, 1019; 2 Stark., 511.)

Lastly, the prisoner does not come within the operation of the Extradition Act, for that Act only applies to "*accused* persons," and the prisoner is not an accused person,

but a "condemned person." He was condemned in his absence by the French proceeding called "condemnation pas contumace," which changes his position to that of a condemned person.

On this point he cited the 25 and 26 Vict., c. 70, and the Code d'Instruction Criminelle, 476, 477, 478, 518, 519.

Rolt, A.-G., Sir *W. Bovill*, S.-G., and *Hannen*, for the Crown.—Even if the prisoner were condemned "par contumace," he is not thereby taken out of the category of "accused" persons. A condemnation par contumace is merely provisional, and is intended to operate as a sort of duress to compel appearance; and when one so condemned is arrested or surrenders himself, the condemnation is annulled, and he takes his trial as if no such condemnation had ever taken place. [In support of this they read the evidence of M. Rasul, a French advocate, to that effect.] But here there is no sufficient proof of a condemnation par contumace. Again: by the 24 and 25 Vict., c. 73, (the Act for consolidating the statute law relating to indictable offences,) knowingly uttering a forged document is classed under the head of forgery, and is included therein. But if this were not so, there was ample evidence before the magistrate that the prisoner had committed forgery. The mise en accusation contains charges that he had "commis le crime de faux en ecriture privé;" and a letter written by the prisoner was in evidence, which was addressed to the Juge d'Instruction, in which the prisoner, after saying that he will give the judge "la list exacte de faux* qui me sont reprochés," proceeds—"à avouer tous ces faux sans en excepter un." Finally, with regard to the documents, we are not here with copies to be certified according to the 6 and 7 Vict., c. 75, but with original documents, and have only to show what they contain, and that the subject-matter of their contents, as taken according to the law of France, would be sufficient to condemn if taken according to the law of England. All that is done by the 2d section is to provide, that if the offence is to be proved by copies of depositions, then those copies are to be proved in a particular way, and it is to avoid any question that the originals have been here produced. The mise en accusation accuses the prisoner of forgery; it is a judicial document, fully equivalent to a warrant, and is authenticated by the seal of the Cour Imperial de Paris, and that of the Minister of Justice in France. The depositions are like-

* Forgery.—It was suggested for the prisoner that this might have been "fautes," but the original was produced.

wise sealed with the seal of the Minister of Justice, and all the requirements of the Act are fully satisfied.

Edward Clarke, in reply.—If we have not sufficient evidence of a condemnation par contumace, that is owing to the refusal of the French authorities to supply us with the necessary proofs; and if rigid proof were required in such cases, it might occur that the extradition of an escaped prisoner might be claimed on the suppression of evidence of his condemnation. He maintained, however, that there was sufficient proof. A person condemned par contumace was called, in various passages of the French Code, (clauses 465, 466,) a condemned, and not an accused, person; he is in a less favourable position when on his trial, (clauses 518, 519;) and the test of his being an accused person was, that there was in existence against him a penal sentence producing the immediate effect of altering his status, and at the expiration of twenty years becoming irreversible. The word "issued," as applied to the warrant, meant "signed." [Lord *Chelmsford*, L. C.—Surely the meaning of the Acts is, that if a document requires, according to the French law, signature, then it must be signed, and not that if it only requires sealing according to the French law, a signature must be added to comply with the English law.] There is no power to authenticate a seal, or to receive in evidence original depositions.

Lord CHELMSFORD, L. C.—I granted this habeas corpus during the vacation, and made it returnable on the first day of term, in order that the objections which were made to the delivering up of the prisoner to the French Government might be publicly argued and determined.

In considering the objections which have been raised, I am bound to adhere strictly to the provisions of the Acts of Parliament relating to the French Extradition Treaty, and to determine from them, and them only, whether the detention of the prisoner is lawful; in other words, whether the police magistrate had power to commit the prisoner to gaol, there to remain until delivered up to some persons duly authorised to receive him, and convey him to France.

The Act of the 6 and 7 Vict., c. 75, is still the governing Act upon the Extradition Treaty with France; but the Act of the last session altered the provisions of the former Act with respect to the mode of authenticating the depositions against the person accused, and make the requisite evidence exactly what the Legislature had already decided

it should be with respect to documents of foreign courts of justice produced upon a trial in any of our own courts.

Four objections were made to the detention of the prisoner.

The first, which was disposed of in the course of the argument, was, that the depositions were not properly authenticated, because they were taken four years before the Act of last session, and therefore at a time when proof of a different kind than that which has been given would have been necessary. The observation which I made at the time this objection was stated, I can only repeat in answer to it. It is quite immaterial when the depositions were made, if they are properly authenticated as required by law. Suppose the prisoner had fled to some country with which France had no Extradition Treaty, and after some time had been traced into England. He would surely have been in the position of an accused person, and it could not have been necessary to have the depositions resworn in France before his delivery up could be demanded. If not, then the date of the depositions must be immaterial, and the only question under the Acts will be, whether they are properly authenticated, which must be determined by the existing law.

The next objection was, that the depositions were not admissible in evidence, because they were signed by a judge or other competent magistrate, who also signed the warrant of arrest. This objection appears to me to have arisen from some misapprehension of the provisions of the statutes. The 2d section of the 6 and 7 Vict., c. 75, which is permissive only, allows copies of the depositions on which the original warrant was granted to be produced in evidence, and in such case the copies must be certified under the hand of the person issuing the warrant. But in this case the original depositions themselves have been sent over from France; and, therefore, all the provisions in this Act, and in the Act of last session, as to the signature of the depositions, are wholly inapplicable.

But it was said that the warrant of arrest or other equivalent judicial document (which must always be produced) must bear the signature of a judge or competent magistrate in France. All that is required, however, under the 6 and 7 Vict., c. 75, is, that such warrant or equivalent document should be authenticated in such manner as would justify the arrest of the supposed offender in France upon the same charge, or that the acts charged

against the supposed offender should appear to the justice of the peace (by the 8 and 9 Vict., c. 120, the police magistrate) to be clearly set forth in such warrant of arrest, or other equivalent judicial document. The document which has been called "mise en accusation," and is described on the face of it as "arrêt qui renvoie Coppin (absent) aux assises de l'Yonne," was admitted to be equivalent, at least, to a warrant of arrest, if not identical with such a warrant. For after reciting various crimes and offences with which the prisoner was charged, it goes on in these terms:—"Paul Emile Charles Coppin, &c., sera pris au corps conduit dans la maison de justice près la Cour d'Assises du department de l'Yonne, et ecroiré sur les registres de la dite maison." This is an act of the Cour Imperiale de Paris, authenticated by the seal of the Court, and also by the seal of the Minister of Justice in France; and it contains a variety of charges of forgery of the most specific descriptions. Therefore, the arrêt is not only sufficiently authenticated to have justified the arrest of Coppin in France, but the acts charged are also set forth in it, so as clearly to appear to the magistrate to whom it was produced. The original depositions are all of them sealed, like the arrêt, with the seal of the Minister of Justice. Every condition required by the Acts has been fully complied with, in respect of all the documents in evidence before the police magistrate, to support the requisition for the delivering up of Coppin.

The third objection was, that Coppin was charged not with forgery, but with having uttered a forged document, which, it was argued, was not an offence included within the treaty and the Act of Parliament. In answer to this it was said, that by the "Act to consolidate and amend the Statute Law relating to Indictable Offences by Forgery," (24 and 25 Vict., c. 73,) uttering a forged document knowing it to be forged was classed under the general head of forgery, and was not a distinct offence from actual forgery, but was included in that description, and might be so named. If that be so, even if the charge against Coppin had been only for uttering a forged document, his offence would have been, within the terms of the treaty, the crime of forgery. But it is unnecessary for me to decide this question, as there is ample evidence, upon the documents produced before the police magistrate, to establish the offence, not of uttering only, but also of actual forgery. The "mise en accusation" contains a very large number of charges, some of forgery, others of knowingly uttering

forged documents. Coppin, who was probably well aware of the charges preferred against him, or, at all events, must have known the acts which he had committed, wrote a letter to the Juge d'Instruction in these terms:—"Permettez-moi d'intervenir dans l'instruction que necessite mon epouvantable catastrophe pour vous dire que j'attends encore deux ou trois renseignements afin de pouvoir vous donner la liste exacte et complète de *faux* qui me sont reprochés, avec distinction des actes et des billets comme je suis disposé aujourd'hui devant vous, et plus tard devant le jury, *à avouer tous ces faux, sans en excepter un.* Je viens éclarer votre religion et vous guider dans le pénible tache qui vous est imposé." After this letter, it would be a hopeless task to contend that the magistrate would not have been justified in sending the prisoner to trial for forgery, if the offence had been committed in this country.

The fourth and last objection was, that Coppin had ceased to be an "accused" person, because he had been already "condemned" in France for the offences with which he was charged; and it was contended that I was bound to accept the fact of his condemnation, without looking at the nature of the proceeding upon which it was founded. When this argument was first addressed to me, I was under the impression that there would be found amongst the documents a formal judgment against the prisoner. But it appears that there is no other proof of this alleged judgment than the deposition of a witness named Derepas, that "there was no trial, because the prisoner left, and that he was judged par contumace." This, of course, is not proper or even admissible evidence of a foreign judgment, and the objection might have been disposed of at once upon this ground. But so much misapprehension seems to prevail as to the effect of a judgment par contumace in France, with reference especially to the Extradition Treaty, that I thought it desirable, notwithstanding the imperfect evidence, to permit the question to be argued.

This being a question of foreign law, it was necessary that there should be evidence given to the magistrate by some person skilled in that law as to the nature and effect of such a judgment. Accordingly a French advocate, M. Eugene Rasul, deposed as follows:—"If a man is accused of forgery in France, and a judgment par contumace obtained against him, it would be a sentence of the court without the assistance of a jury. If that man is arrested

or surrenders himself, that judgment is annulled, so that it is exactly the same as if no proceedings had been taken against him, and then he undergoes his trial for the offence with which he was charged." Without this evidence it would have been impossible for the magistrate to have any competent knowledge upon the subject; for, as Lord Brougham said in *The Sussex Peerage Case*, (11 Cl. and Fin. 115,) "the judge has not organs to know and to deal with the text of the foreign law, and therefore requires the assistance of a lawyer who knows how to interpret it." But, having this assistance, and being referred by M. Rasul to the Code Napoleon, we may venture to look into the text and to the article 476 of the Code d'Instruction Criminelle, upon which he founds his opinion, which is in these terms:—"Si l'accusé se constitue prisonnier ou s'il est arreté avant que la peine soit eteinte par prescription, le jugement rendu par contumace et les procedures faites contre lui depuis l'ordonnance de prise de corps ou de se representer, seront anéantis de plein droit et il sera procédé à son egard dans la forme ordinaire." It will be observed that the article commences by calling the alleged offender, after a judgment par contumace, the *accused* and not the *condemned*. And as upon his appearance or upon his apprehension judgment against him is annulled, and he is to be put upon his trial for the offence, I do not see how he can be described otherwise than as an accused person.

But it is said that the judgment par contumace places the party who afterwards surrenders himself, or is apprehended and brought before the court, in a less favourable position upon the trial which ensues, and articles 518 and 519 of the Code d'Instruction Criminelle were referred to to establish this assertion. I ought, perhaps, to refuse to look at these articles without a skilled interpreter, but I am so anxious that the case should be thoroughly investigated, that I am disposed to permit this further irregularity in the proceedings.

It appears to me that the object and effect of these articles have been entirely misunderstood. The title of the chapter under which they are merged is, "De la Reconnoissance de l'identité d'un individu condamné evadé et repris;" and article 18 is to this effect:—"La reconnoissance de l'identité d'un individu condamné evadé et repris sera faite par la cour qui aura prononcé sa condamnation." It merely provides for establishing the identity of the party before he is sent to his trial. And in a note

to this article in the edition of the Code which I have, it is said, "Au reste, cette identité reconnue comme l'arrêt de condamnation se trouve anéanti de plein droit, l'accusé devrait être soumis à de nouveaux debats devant les jurés." The 519th article merely provides that all the judgments with regard to the identification of an accused party shall be without the assistance of a jury. It does not appear, therefore, that the trial of a person condemned par contumace differs at all from that of a party who is put upon his trial without any previous condemnation.

But in order that no part of the argument for the prisoner may be disregarded, I will assume that it has been established that the judgment par contumace does work some prejudice to the party upon the trial, either by reducing the amount of necessary proof, or by changing its character, or by making him liable to costs; but how could that possibly take him out of the category of accused persons? He has ceased to be a person condemned, because his condemnation is annulled upon his appearance, and he is to take his trial for offences with which he stands charged. What better, I ought rather to say what other, description of him could be given than that of a person accused?

I have not at any period of the argument entertained the slightest doubt as to the invalidity of all the objections, but I was anxious that the subject should be fully discussed, in order that it might be publicly known that the delivery up of the prisoner to France was in strict accordance with law, and the correct interpretation of the treaty, and of the acts for giving effect to it. The question has been fully argued, and I am of opinion that no case has been made out for the discharge of the prisoner, and that he must be remanded.

NOTE UPON POLITICAL OFFENCES.

The following are the clauses upon this subject inserted in the most recent French treaties :—

Il est expressément stipulé que le prévenu ou le condamné dont l'extradition aura été accordée ne pourra être, dans aucun cas, poursuivi ou puni pour aucun crime ou délet politique anterieur à l'extradition.

Ne sera pas réputé crime politique ni fait connexe à un semblable crime, l'attentat contre la personne du chef d'un gouvernement étranger, ou contre celle d'un des membres de sa famille, lorsque cet attentat constituera le fait, soit de meurtre, soit d'assassinat, soit d'empoisonnement.

Article 8 of Convention between France and Saxe-Weimar, 7 Aug. 1858.

9. § 1. Il est expressément stipulé que le prévenu ou le condamné dont l'extradition aura été accordée, ne pourra, dans aucun cas, être poursuivi ou puni pour un délit politique antérieur à l'extradition, ni pour un des crimes ou délits non prévus par la presente convention.

§ 2. Mais il est entendu que les crimes contre la personne du souverain, ou des membres de sa famille, et respectivement des cardinaux de la Sainte Eglise, ne sont point compris dans le § 1 du présent article.

Convention between France and the Pontifical States, 19 July 1859.

Ses tentatives d'assassinat, d'homicide, ou d'empoisonnement contre le chef d'un gouvernement étranger ne seront pas réputés crimes politiques pour l'effet de l'extradition. Ne seront pas non plus considérés comme crimes politiques ceux énumerés dans cet article, lorsqu'ils seront commis contre l'héritier immédiat de la couronne de France.

Convention between France and Chili, 11 April 1860.

Il est bien entendu que ne sera pas réputé délit politique, ni fait connexe à un semblable délit, l'attentat contre la personne d'un souverain étranger ou contre celle des membres de sa famille, lorsque cet attentat constituera le fait, soit d'assassinat, soit d'empoisonnement, soit de meurtre.

Additional Convention between France and the Low Countries, 2 Aug. 1860.

"I see a notice has been given that when the Bill goes into committee a clause will be proposed, the purpose of which is to exclude all offences which are considered to be of a political character. I do not say that on principle I should have any objection to that, provided you define what is to be treated as a political offence. I take it that, in a rough and popular way, it would not be difficult to do that. For instance, if a man were killed in a riot, or in an attempt to excite a tumult or popular insurrection, that probably

would be regarded as a political offence. But a difficulty would arise where you have to deal with attempts at assassination.

"It does seem to me that, while on the one hand we desire to retain inviolate the right of exemption from arrest for political offences, it is monstrous to say, on the other hand, that if any private person is assassinated in the streets of Paris for example, and the murderer escapes to England, he may be punished; but that if the person so assassinated is invested with any political character, then the offence becomes a political offence, and the law of England declares that he shall not be given up to justice. This position appears to me to be utterly untenable. There is, I apprehend, a discretionary power given to the Secretary of State as to the application of the Act, and all I can say on this point is, that if any honourable gentleman can succeed in establishing a distinction between the case of a purely political offence and an offence against morality, I shall be willing to consider the proposal to insert a clause to meet such a case."—*Speech of Lord Stanley in the House of Commons*, 3d August 1866.

On the same occasion Mr J. S. Mill suggested that the political offences excluded from the operation of the law should be defined as, "Any offence committed in the course of or furthering of civil war, insurrection, or political commotions."

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